through this free government which we have enjoyed, an open field and a fair chance that the struggle should be maintained that we may not lose our birthright.

As President Lincoln was a living witness to the opportunities opened up to the children of the most humble householder, so was Congressman UTTER a living example of the possibilities that are open to the laborer, the artisan, and the tradesman of our great country, if they only have the determination, the stamina, and ability to take advantage of the golden opportunities ever opening at their feet.

Congressman UTTER was a printer by trade, and a printer and publisher by occupation. He served his county and State in many capacities, each time establishing his worth. He was successively elevated in position and in opportunity to serve in greater things, and we can but mourn his sudden demise while yet in the perfection of his manhood and in the heyday of his success.

I feel that his life and achievements should be an inspiration to the youth of his own State and of our common country.

A kindly, courteous gentleman. Long shall we cherish his memory.

Mr. CRAGO. Mr. Speaker, it was my privilege to have been closely associated with GEORGE HERBERT UTTER, late a Representative from the State of Rhode Island, in much of his congressional labors. We were members of the same committee and at times were brought into close contact by reason of work on subcommittees. His very unexpected death was to me a great personal loss, and to this service, in honor of his memory, I bring words of sorrow, feeble though they may be, yet too deep and real to measure by any standard other than of friendship for the man and a deep appreciation of the many virtues his life exemplified.

I shall leave to others the recital of the events of his life prior to the convening of the special session of the Sixty-second Congress, as my personal acquaintance with him began at that time.

A brief reading of his biography discloses the fact that his former work and training in public life had well fitted him for his duties as a Member of this body, and we see the result of that training reflected in his work.

In his committees and on the floor of this House he took an active part and interest. He thought for himself, and his judgment on public questions was formed only after mature deliberation and was always founded on a knowledge of the facts and reasoned out by a mind trained to measure men and apply principles.

As a Republican Gov. UTTER was loyal to his party and the theory of government for which it stands, yet higher than the good of party he ever placed the common welfare of the Nation, and only those measures which appealed to him as right and just received his support.

His services in this legislative body was brief, yet he impressed his individuality on all with whom he came in contact, and had it been given him to serve even for a few years his ability, his loyalty to duty, his zeal for the public good would undoubtedly have commanded general recognition, and his real worth would have given him a prominent place in the councils of this body.

Born in the year 1854, he was but a child when, in 1861, the War between the States began, and so he could not have a part in that great struggle which called to the field the young manhood of this Nation. When in 1898 the call to arms was again sounded he had reached that age in life when, until the Government was in greater need of men, he could not follow the flag to the front and participate in that brief but brilliant feat of arms. And so his fame is linked not to any martial epoch of our history, but is the product of an era of peace, yet his love and veneration for the men who bore arms in defense of our country was intense and sincere.

His fame rests not on titles, but his titles came to him by reason of the true greatness of the man.

In the closing days of a great political campaign, a campaign in which sane principles of self-government, by the people, were being assailed as never before, when all about him were the sounds of conflict, a conflict in which, from a sense of duty, he had enlisted with heart and soul on the side of law and order as he saw it, he must needs answer the higher call. His body, weakened by disease, refused longer to hold the life which struggled so hard to gain the victory.

This life is grand and good and noble, yet it is a battle, a struggle from the cradle to the grave.

The physical man, in order that he may feel and know the pleasurable sensations, must be subject to pain and decay; the soul of man, in order that it may soar to heights divine, has within it the possibilities of sinking into depths of low desire.

To war against pain and death, to struggle against that which would drag one to a lower level, physical, mental, and moral, is the challenge nature gives her children and impartially awaits our action.

The life of the departed shows him victor in this conflict. He had his days of sorrow and disappointment, but there was always the bright to-morrow—to-morrow with all its joys, its possibilities, and its pleasures. May we enter our to-morrow with a new realization that we are all agents of a great power in a mighty purpose; the manner of accomplishing that purpose we may not know, but if our work is good, if our lives are filled with good deeds, we shall have fulfilled the highest purpose of the Creator.

Gov. UTTER has reached the end of all human endeavor, and in that spirit land of life eternal has found what mortal man can never know—perfect happiness.

Peace to his soul, reverence for his memory, love for a life filled with good deeds—a life once ours, for evermore a part of the Infinite.

Mr. O'SHAUNESSY. Mr. Speaker, I ask that unanimous consent be given to those who are unavoidably absent to extend their remarks and make them a part of the proceedings of this day.

The SPEAKER pro tempore. Without objection, it is so ordered.

There was no objection.

ADJOURNMENT.

The SPEAKER pro tempore. In accordance with the resolution heretofore adopted and as a further mark of respect to the deceased the House will now stand adjourned until 10 o'clock and 30 minutes a. m. to-morrow.

Accordingly (at 2 o'clock and 52 minutes p. m.) the House adjourned to meet to-morrow, Monday, February 10, 1913, at 10.30 a. m.

SENATE.

MONDAY, *February 10, 1913.*

Prayer by the Chaplain, Rev. Ulysses G. B. Pierce, D. D.

Mr. BACON took the chair as President pro tempore under the previous order of the Senate.

The Journal of the proceedings of Saturday last was read and approved.

CONNECTICUT RIVER DAM (S. DOC. NO. 1067).

The PRESIDENT pro tempore laid before the Senate a communication from the Secretary of War, transmitting, in response to a resolution of the 5th instant, certain information relative to the contracts or agreements to be entered into by and with the Connecticut River Co. with reference to a dam across the Connecticut River and the generation of power in connection therewith, which was ordered to lie on the table and to be printed.

DISTRICT ELECTRIC RAILWAY COMMISSION (S. DOC. NO. 1068).

The PRESIDENT pro tempore laid before the Senate a communication from the Interstate Commerce Commission, transmitting, pursuant to law, the fifth annual report of the District Electric Railway Commission respecting the enforcement of the act of Congress governing street railways in the District of Columbia, which, with the accompanying paper, was referred to the Committee on the District of Columbia and ordered to be printed.

FIRST PRESBYTERIAN CHURCH OF NEWBERN, N. C. (S. DOC. NO. 1069).

The PRESIDENT pro tempore laid before the Senate a communication from the assistant clerk of the Court of Claims, transmitting a certified copy of the findings of fact and conclusion filed by the court in the cause of the Deacons of the First Presbyterian Church of Newbern, N. C., *v.* United States, which, with the accompanying paper, was referred to the Committee on Claims and ordered to be printed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by J. C. South, its Chief Clerk, announced that the House had disagreed to the amendments of the Senate to the bill (H. R. 19115) making appropriation for payment of certain claims in accordance with findings of the Court of Claims, reported under the provisions of the acts approved March 3, 1883, and March 3, 1887, and commonly known as the Bowman and the Tucker Acts; agrees to the conference asked for by the Senate on the disagreeing

votes of the two Houses thereon, and has appointed Mr. SIMS, Mr. LEE of Georgia, and Mr. MORSE of Wisconsin managers at the conference on the part of the House.

The message also announced that the House had agreed to the amendments of the Senate to the following bills:

H. R. 1332. An act regulating Indian allotments disposed of by will;

H. R. 16450. An act to punish the unlawful breaking of seals of railroad cars containing interstate or foreign shipments, the unlawful entering of such cars, the stealing of freight and express packages or baggage or articles in process of transportation in interstate shipment, and the felonious asportation of such freight or express packages or baggage or articles therefrom into another district of the United States and the felonious possession or reception of the same;

H. R. 18425. An act to remove the charge of desertion from the military record of Simon Nager; and

H. R. 28186. An act making appropriations for fortifications and other works of defense, for the armament thereof, for the procurement of heavy ordnance for trial and service, and for other purposes.

The message further announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 8035) granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy and of wars other than the Civil War, and to certain widows and dependent relatives of such soldiers and sailors.

The message also announced that the House insists upon its amendments to the bill (S. 267) providing for assisting indigent persons, other than natives, in the District of Alaska, disagreed to by the Senate, agrees to the conference asked for by the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. HUMPHREYS of Mississippi, Mr. HARDY, and Mr. LANGHAM managers at the conference on the part of the House.

The message further announced that the House had passed a bill (H. R. 17593) to divest intoxicating liquors of their interstate-commerce character in certain cases, in which it requested the concurrence of the Senate.

ENROLLED BILLS SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bills, and they were thereupon signed by the President pro tempore:

S. 109. An act to authorize the sale and disposition of the surplus and unalloted lands in the Standing Rock Indian Reservation in the States of South Dakota and North Dakota, and making appropriation and provision to carry the same into effect;

S. 7160. An act granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors;

S. 8034. An act granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors;

H. R. 1332. An act regulating Indian allotments disposed of by will;

H. R. 8861. An act for the relief of the legal representatives of Samuel Schiffer;

H. R. 21524. An act for the relief of Frederick H. Ferris;

H. R. 25002. An act to amend section 73 and section 76 of the act of August 27, 1894, entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes";

H. R. 27879. An act providing authority for the Northern Pacific Railway Co. to construct a bridge across the Missouri River in section 36, township 134 north, range 79 west, in the State of North Dakota;

H. R. 27944. An act to extend the time for constructing a bridge across the Mississippi River at Minneapolis, Minn.;

H. R. 27986. An act to extend the time for constructing a bridge across the Mississippi River at Minneapolis, Minn.;

H. R. 27987. An act to extend the time for constructing a bridge across the Mississippi River at Minneapolis, Minn.; and

H. R. 27988. An act to extend the time for constructing a bridge across the Mississippi River at Minneapolis, Minn.

CREDENTIALS.

Mr. CLARK of Wyoming presented the credentials of FRANCIS E. WARREN, chosen by the Legislature of the State of Wyoming a Senator from that State for the term beginning March 4, 1913, which were read and ordered to be filed.

Mr. KAVANAUGH presented the credentials of JOSEPH T. ROBINSON, chosen by the Legislature of the State of Arkansas a Senator from that State for the term beginning March 4, 1913, which were read and ordered to be filed.

PETITIONS AND MEMORIALS.

The PRESIDENT pro tempore presented resolutions adopted by the Cigar Makers' International Union, favoring the enactment of legislation granting the right of citizenship to the people of Porto Rico, which were referred to the Committee on Pacific Islands and Porto Rico.

He also presented a petition of members of the State Commandery, Military Order of the Loyal Legion of the United States, of Milwaukee, Wis., praying that a pension be granted to the widow of the late Lieut. Gen. Arthur MacArthur, United States Army, which was referred to the Committee on Pensions.

Mr. GALLINGER presented a petition of the Ministers' Conference in Roanoke, Va., praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which was ordered to lie on the table.

He also presented the petition of John D. Sullivan, of Washington, D. C., praying that an appropriation be made for the purchase of ground at College Park, Md., to be used by the Government as an aviation field, which was referred to the Committee on Military Affairs.

Mr. CULLOM presented petitions of sundry citizens of Deer Grove, Homer, Hillsboro, Manville, Peoria, Rockford, Enfield, Wheaton, Evanston, Watseka, Chicago, Galesburg, Grayville, Sparta, Marshall, Jacksonville, Rock Island, Steward, Biggsville, Sterling, Reno, Charleston, Onarga, Rantoul, Prophetstown, Olney, Joliet, Apple River, Urbana, Paris, Towanda, Farmington, Harvard, Danville, Macomb, Kampsville, Gilman, Detroit, Edgewater, Pearl City, Good Hope, Mattoon, Quincy, Champaign, Tolono, Thompsonville, Aurora, Moweaqua, Cerro Gordo, Eldorado, Paxton, Pekin, Downers Grove, Makanda, Decatur, Bloomington, Kewanee, Harrisburg, Normal, Pontiac, Brimfield, Centralia, Peoria, Carbondale, Pana, Alton, Waukegan, Freeport, Morgan Park, Annawan, Concord, Shelbyville, Ridge Farm, Farina, Coultersville, Elgin, and Dwight, all in the State of Illinois, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

He also presented petitions of sundry citizens of Chicago, Ottawa, and Alton, all in the State of Illinois, remonstrating against the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

He also presented petitions of Moline Chapter, General John Stark Chapter, and George Rogers Clark Chapter, Daughters of the American Revolution, all in the State of Illinois, praying for the enactment of legislation to prohibit the desecration of the American flag, which were referred to the Committee on the Judiciary.

He also presented a petition of Waldron-Murphy Camp, No. 29, United Spanish War Veterans, of Chicago, Ill., and a petition of the J. M. Joplin Camp, No. 66, United Spanish War Veterans, of Benton, Ill., praying for the enactment of legislation providing for the pensioning of the widows and orphans of the soldiers of the Spanish-American War, which were referred to the Committee on Pensions.

He also presented a memorial of Moline Chapter, Daughters of the American Revolution, of Moline, Ill., and a memorial of Fort Armstrong Chapter, Daughters of the American Revolution, of Rock Island, Ill., remonstrating against the enactment of legislation transferring the control of the national forests to the several States, which were referred to the Committee on Forest Reservations and the Protection of Game.

Mr. CRAWFORD presented petitions of sundry citizens of Wessington Springs, Ashton, Redfield, Waubay, Corona, White Rock, Andover, Hecla, Bath, Mellette, West Port, Sisseton, Frederick, Langford, Brookings, White, Pierre, Conde, Selby, Cresbard, Claremont, Groton, Watertown, Clark, Aberdeen, Yankton, and Volin, all in the State of South Dakota, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

He also presented a memorial of the congregation of the Seventh-day Adventist Church of Leola, S. Dak., remonstrating against the enactment of legislation compelling the observance of Sunday as a day of rest in the District of Columbia, which was ordered to lie on the table.

Mr. BRISTOW presented petitions of sundry citizens of Topeka, of members of the Adult Bible Class Federation of Garden City, of sundry students of the Agricultural College of Manhattan, of members of the Woman's Christian Temperance Union of Bunker Hill, of members of the Young Men's Christian Association of the Kansas State Agricultural College of Manhattan, all in the State of Kansas, and of members of the Anti-Saloon League of Washington, D. C., praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

He also presented petitions of sundry citizens of Toledo, Kans., praying for the passage of the so-called Kenyon "red light" injunction bill, which was ordered to lie on the table.

Mr. CURTIS presented petitions of the congregations of the First Presbyterian Church of Highland; of the First Methodist Church of Rosedale; of the Adult Bible Class Federation of Garden City; of the students of the Kansas Agricultural College of Manhattan; and of sundry citizens of Moran, Topeka, and Meade, all in the State of Kansas, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

Mr. STONE presented a petition of sundry citizens of Roscoe, Mo., praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which was ordered to lie on the table.

Mr. WORKS presented a petition of the California State Board of Forestry, praying that an additional appropriation be made for the protection of forested watersheds of navigable streams, which was referred to the Committee on Agriculture and Forestry.

He also presented a petition of the Woman's Christian Temperance Union and of sundry citizens of Visalia, Cal., praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which was ordered to lie on the table.

Mr. BURNHAM presented petitions of sundry citizens of Whitefield, Nashua, Lakeport, Concord, Manchester, Bristol, Franklin, and Rochester, all in the State of New Hampshire, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

Mr. WARREN presented petitions of the congregation of the Congregational Church of Douglas and of sundry citizens of Douglas and Jackson, all in the State of Wyoming, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

Mr. SMITH of South Carolina. I present a concurrent resolution adopted by the General Assembly of the State of South Carolina, which I ask may be printed in the RECORD and referred to the Committee on Post Offices and Post Roads.

There being no objection, the concurrent resolution was referred to the Committee on Post Offices and Post Roads and ordered to be printed in the RECORD, as follows:

Concurrent resolution memorializing Congress to appropriate $100,000 for use in repair of public roads on which Rural Free Delivery mail routes are established.

Be it resolved by the house of representatives (the senate concurring):

SECTION 1. That our Senators and Representatives in Congress be, and they are hereby, requested to endeavor to secure an appropriation by Congress of $100,000 to be used in the State of South Carolina for repairing public roads over which Rural Free Delivery mail routes are established.

SEC. 2. That a copy of this resolution be sent to our Senators and Representatives in Congress.

—

IN THE HOUSE,
Columbia, S. C., January 31, 1913.

The house agrees to the resolution and orders that it be sent to the senate for concurrence.

By order of the house.

JAS. A. HOYT,
Clerk of the House.

—

IN THE SENATE,
Columbia, S. C., January 31, 1913.

The senate agrees to the resolution and orders that it be returned to the house with concurrence.

By order of the senate.

M. M. MANN,
Clerk of the Senate.

Mr. SMITH of South Carolina presented a petition of sundry citizens of Marion County, S. C., praying for the enactment of an interstate liquor law to prevent the nullification of State liquor laws by outside dealers, which was ordered to lie on the table.

Mr. GRONNA. I present a concurrent resolution passed by the Legislature of North Dakota, which I ask may lie on the table and be printed in the RECORD.

There being no objection, the concurrent resolution was ordered to lie on the table and be printed in the RECORD, as follows:

House concurrent resolution memorializing the Congress of the United States to pass the measure now pending in the Senate known as the Kenyon-Sheppard bill.

Whereas there is now on the statutes of the State a law forbidding the sale or transportation of intoxicating liquors in the State of North Dakota; and

Whereas the interstate common carriers are bringing into our State large quantities of intoxicating liquors to be sold in open violation of our State laws and to the great injury of the people of the State; and

Whereas there is now pending in the Congress of the United States a measure known as the Kenyon-Sheppard bill, which has for its purpose the prevention of interstate shipments of liquors into States where the laws of the State forbid the sale of same: Therefore be it

Resolved by the House of Representatives of the State of North Dakota (the Senate concurring), That the Congress of the United States be, and the same is hereby, earnestly memorialized and requested to pass the Kenyon-Sheppard bill at the earliest date possible and without amendment; be it further

Resolved, That a copy of these resolutions, properly certified, be forwarded at once to our Senators and Representatives in Congress and to the Speaker of the House of Representatives and to the President of the Senate.

Mr. GRONNA presented telegrams in the nature of petitions from the Woman's Christian Temperance Unions of Cass, Traill, and Steele Counties, of the State Woman's Christian Temperance Union of North Dakota, and of sundry citizens of Devils Lake, Fargo, and Park River, all in the State of North Dakota, and of the Ministers' Conference in Roanoke, Va., praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

Mr. BURTON presented petitions of sundry citizens of Beech Grove, Newark, Rawson, Wilmington, Poplar Grove, Gratis, Napoleon, Union, Fort McKinley, Troy, Dayton, Wakeman, Leesburg, Sidney, Ashland, Graham County, Venedocia, Toledo, Columbus, Blanchester, Oakland, Mark Center, Deenville, Kenton, Mingo Junction, Athens County, Steubenville, Painter Creek, Oxford, Springfield, Manchester, New Waterford, Miami County, Marion County, Tiffin, Dayton, and Marietta, all in the State of Ohio, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

Mr. CUMMINS. I present a concurrent resolution adopted by the Legislature of Iowa, which I ask may lie on the table and be printed in the RECORD.

There being no objection, the concurrent resolution was ordered to lie on the table and be printed in the RECORD, as follows:

Concurrent resolution memoralizing Congress to pass the Kenyon-Sheppard bill relating to the interstate transportation of intoxicating liquors.

Whereas for a number of years last past the sale of intoxicating liquors as a beverage has been prohibited by law in a large number of the cities and counties of the State of Iowa; and

Whereas under the protection of the commerce clause of the Federal Constitution a large quantity of liquor is shipped from without the State to points within the State and disposed of in violation of law; and

Whereas these interstate shipments of liquor and the illegal disposition of the same result in drunkenness, prosecutions, expensive litigation, the commission of crime, and the pauperizing of individuals and families: Now therefore

Be it resolved by the House of Representatives of the State of Iowa (the Senate concurring), That the Congress of the United States be, and it is hereby, memorialized to pass the Kenyon-Sheppard bill, now pending before Congress, looking to the correction of these evils, and that the Representatives in Congress and the United States Senators from Iowa be, and they are hereby, requested to use all honorable means to secure the passage of said act; and

Resolved further, That a copy of this resolution be forwarded by the secretary of the senate and the clerk of the house to the Speaker of the House and the President of the Senate of the United States, and to the Representatives in Congres from Iowa, and to the President of the United States.

January 25, 1913, introduced in the house by Bliss of Ringgold.
January 27, 1913, adopted by the house.
January 28, 1913, received by the senate.
January 30, 1913, adopted by the senate.

A. C. GUSTAFSON,
Chief Clerk of the House.
JOS. E. MEYER,
Secretary of the Senate.
EDWARD H. CUNNINGHAM,
Speaker of the House.
W. T. HARDING,
President of the Senate.

I hereby certify that this concurrent resolution originated in the House of Representatives of the Thirty-fifth General Assembly of the State of Iowa.

A. C. GUSTAFSON,
Chief Clerk of the House.

Mr. MYERS presented petitions of sundry citizens of Eureka, Cut Bank, Moore, Inverness, and Glendive, and of the congregation of the First Presbyterian Church of Philipsburg, all in the State of Montana, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

Mr. MARTINE of New Jersey presented petitions of Local Grange No. 190, Patrons of Husbandry, of Englishtown, and of sundry citizens of Newark, Jersey City, Flemington, Garfield, Elizabeth, New Monmouth, Mountain View, Union Hill, Cranbury, Morristown, Bridgeton, Roselle, Keyport, Lakewood, Marlton, Shiloh, Montclair, Pleasantville, Blairstown, Belleville, White House, Merchantville, Toms River, Newton, Freehold, Hightstown, Highlands, Trenton, Atlantic Highlands, Mendham, Hamburg, Preakness, Palmyra, Irvington, Frenchtown, Plainfield, Ridgewood, Mount Holly, Millville, Red Bank, Peapack, Gladstone, East Orange, Monmouth County, Boonton, Metuchen, Long Branch, Lambertville, Pointville, Wrightstown, Readington, Bound Brook, Pennington, Bloomfield, Summit, Caldwell, Englishtown, and Burlington, all in the State of New Jersey,

praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

Mr. MARTINE of New Jersey (for Mr. BRIGGS) presented petitions of sundry citizens of Moorestown, East Orange, Boonton, Bloomfield, Oceanport, Hampton, Caldwell, Montclair, Newark, Highlands, Keyport, Metuchen, Palmyra, Pleasantville, Readington, Plainfield, Ocean Grove, Hillsdale, Princeton, Hamburg, Burlington, Pennington, Mount Holly, Blairstown, Trenton, West Long Branch, Eatontown, Marlton, Bound Brook, Lambertville, Asbury Park, Englishtown, Atco, Elizabeth, Morristown, Orange, Freehold, Upper Montclair, Woodstown, and Basking Ridge, all in the State of New Jersey, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

Mr. PERKINS presented a memorial of the congregation of the Seventh-day Adventist Church of Arroyo Grande, Cal., and a memorial of the congregations of the Seventh-day Adventist Churches of the State of California, remonstrating against the enactment of legislation compelling the observance of Sunday as a day of rest in the District of Columbia, which were ordered to lie on the table.

Mr. SMITH of Maryland presented a petition of the Park View Citizens' Association of the District of Columbia, praying that an appropriation of $128,000 be made for the construction of a school building west of Soldiers' Home and south of Rock Creek Road in the District, which was referred to the Committee on Appropriations.

Mr. ROOT presented memorials of sundry citizens of Watertown, N. Y., remonstrating against the passage of the so-called Owen health bill, which were ordered to lie on the table.

He also presented petitions of the Men's Association of the First Baptist Church of Hoosick Falls; of the Men's Bible Class of Herkimer; of the congregation of the Methodist Episcopal Church of Waterloo, and of sundry citizens of Waterloo, Auburn, Hornell, Poughkeepsie, Seneca Falls, North Tonawanda, Freeport, Syracuse, Pernville, Long Lake, Cornwall, and Orrs Mills, all in the State of New York, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

He also presented a petition of sundry citizens of New York, N. Y., praying for the passage of the so-called Nelson bill, amending the Harter Act relating to the liability of shipowners, which was referred to the Committee on Commerce.

Mr. BROWN presented petitions of members of the Commercial Club of Grand Island, the State Medical Society, and of the medical societies of Cedar, Dixon, Thurston, and Wayne Counties, all in the State of Nebraska, praying for the passage of the so-called Owen health bill, which were ordered to lie on the table.

He also presented memorials of sundry citizens of McCook, Beatrice, and Gothenburg, all in the State of Nebraska, remonstrating against the passage of the so-called Owen health bill, which were ordered to lie on the table.

He also presented a memorial of the Wholesale Liquor Dealers' Association of Nebraska and a memorial of the Willow Spring Distillery Co., of Omaha, Nebr., remonstrating against the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

He also presented a memorial of the Farmers' Education and Cooperative Union, of Dodge County, Nebr., remonstrating against the passage of the so-called agricultural extension bill, which was ordered to lie on the table.

He also presented petitions of sundry citizens of Gordon, Laurel, Lincoln, Cherry County, Seward County, Collegeview, Table Rock, and Omaha, all in the State of Nebraska, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

Mr. DU PONT presented petitions of sundry citizens of Wilmington, Del., praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

Mr. SHIVELY presented petitions of the Woman's Christian Temperance Union of Greencastle, of members of the Woman's Home Missionary Society of South Bend, of members of the German-American Christian Civic League of Indianapolis, of members of the Young Men's Christian Band of Manchester College of North Manchester, of members of the Brotherhood of the First Baptist Church of Goshen, of members of the Bourbon Township Sunday School Association, of members of the First Baptist Church of Fort Wayne, of members of the West Richmond Friends Church and Sunday School of Richmond, of the temperance committee of West Richmond Friends of Richmond, of members of the Friends Church of Charlottesville, of John Wilkinson and 37 other citizens of Carroll County, of William S. Coffey and 12 other citizens of Brown County, of Edmon G. Hall and 8 other citizens of Fowler, of J. Turner Johnson and 39 other citizens of Newburg, of O. N. Huff and 14 other citizens of Wayne County, of Mrs. H. W. Simmons and 7 other citizens of Jeffersonville, and of Ward Marshall and 21 other citizens of Muncie, all in the State of Indiana, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

Mr. TOWNSEND presented a memorial of the congregation of the Seventh-day Adventist Church of Adrian, Mich., and a memorial of the congregation of the Seventh-day Adventist Church of Bloomingdale, Mich., remonstrating against the enactment of legislation compelling the observance of Sunday as a day of rest in the District of Columbia, which were ordered to lie on the table.

He also presented a petition of the congregation of the First United Brethren Church of Grand Rapids, Mich., praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which was ordered to lie on the table.

Mr. SMITH of Michigan. I send to the clerk's desk a concurrent resolution of the Legislature of Michigan ratifying the constitutional amendment providing for the direct election of Senators by the people, together with the certificate of the governor of Michigan to the effect that this has been done. I ask that the concurrent resolution lie on the table and be printed in the RECORD.

There being no objection, the concurrent resolution was ordered to lie on the table and to be printed in the RECORD, as follows:

Senate concurrent resolution 2.

A concurrent resolution ratifying the proposed amendment to the Constitution of the United States providing that Senators shall be elected by the people of the several States.

Whereas the Congress of the United States, after solemn and mature deliberation therein, has, by a vote of two-thirds of both Houses, passed a concurrent resolution submitting to the legislatures of the several States a proposition to amend the Constitution of the United States, which resolution is in the following words:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That in lieu of the first paragraph of section 3 of Article I of the Constitution of the United States, and in lieu of so much of paragraph 2 of the same section as relates to the filling of vacancies, the following be proposed as an amendment to the Constitution, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the States:

"The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

"When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

"This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution."

Resolved by the Senate of the State of Michigan (the House of Representatives concurring), That in the name and behalf of the people of this State, we do hereby ratify, approve, and assent to the said amendment.

Resolved further, That a copy of this assent and ratification, engrossed on parchment, be transmitted by his excellency the governor to the Senate and House of Representatives of the United States in Congress assembled and to the Secretary of State of the United States.

I do hereby certify that the foregoing resolution was adopted by the senate, by a two-thirds vote of all the senators elect, on the 22d day of January, 1913.

DENNIS E. ALWARD,
Secretary of the Senate.

I do hereby certify that the foregoing resolution was adopted by the house of representatives, by a two-thrids vote of all the members-elect, on the 28th day of January, 1913.

CHARLES S. PIERCE,
Clerk of the House of Representatives.

To the President of the Senate of the United States:

This is to certify that the foregoing is a true and compared copy of senate concurrent resolution No. 2 of the State of Michigan, ratifying, approving, and assenting to the concurrent resolution of the Congress of the United States relative to an amendment to the Constitution of the United States providing for the direct election by the people of United States Senators.

In witness whereof I have caused the great seal of the State to be affixed hereto.

Given under my hand, at Lansing, this 3d day of February, 1913.

[SEAL.] WOODBRIDGE N. FERRIS,
Governor.

By the governor:

FREDERICK C. MARTINDALE,
Secretary of State.

By D. H. NIELS,
Deputy Secretary of State.

Mr. LA FOLLETTE presented petitions of sundry citizens of Fond du Lac and Grand Rapids; of the Woman's Christian Temperance Union of Mineral Point; and of the congregations of the Welsh Presbyterian Churches of Jerusalem and Bethesda; and the Methodist and Congregational Churches of Hartford, all in the State of Wisconsin, praying for the passage of the

so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

He also presented petitions of members of the Washington Secular League, of Washington, D. C., and of sundry citizens of the District of Columbia, praying for the enactment of legislation to regulate the hours of employment of women in the District of Columbia, which were referred to the Committee on the District of Columbia.

Mr. TILLMAN. I present a petition signed by a large number of citizens of Marion County, S. C., praying for the enactment of the Kenyon-Sanders bill relative to the interstate shipment of alcoholic liquors in prohibition districts. I ask that the body of the petition be printed in the RECORD, omitting the signatures, and that it lie on the table.

There being no objection, the petition was ordered to lie on the table and the body of the petition was ordered to be printed in the RECORD, omitting the signatures, as follows:

Hon. B. R. TILLMAN,
United States Senate, Washington, D. C.

We, the undersigned citizens of Marion County, State of South Carolina, do hereby respectfully petition you, as our Representative, to use your influence to the enactment of the Kenyon-Sanders bill, now pending, relative to the shipment of alcoholic liquors in prohibition districts. We feel that this bill, if passed, will be of untold benefit to those communities that have already voted prohibition for themselves.

We pray your earnest attention to this matter at once.

Signed by 84 citizens of Marion County, S. C.

Mr. TILLMAN presented a concurrent resolution passed by the General Assembly of the State of South Carolina, praying that an appropriation of $100,000 be made for use in repairing the public roads on which rural free-delivery mail routes are established, which was referred to the Committee on Post Offices and Post Roads.

INTERSTATE SHIPMENT OF LIQUORS.

Mr. ASHURST. Mr. President, I present two petitions signed by citizens of Graham County, Ariz., earnestly petitioning in behalf of the early passage of the Kenyon-Sheppard bill. I ask that the petitions, including the names thereon, be printed in full in the RECORD.

The PRESIDENT pro tempore. The Senator from Arizona asks that the petitions, the nature of which he has stated, be printed in full in the RECORD. Is there objection?

Mr. GALLINGER. I will ask the Senator if the list of names is a very long list? We have heretofore, as a rule, not printed the names of petitioners, but the body of the petition itself.

Mr. ASHURST. There are about 45 or 50 names on each petition, and there are two petitions.

Mr. GALLINGER. As no one here would know those parties simply because their names are printed, would not the Senator be willing to have the petitions printed without the names?

Mr. ASHURST. No, sir; I regret that I would not be willing. I request that the names be printed, because they comprise some of the most honorable, the most respectable, and the most virtuous citizens of Arizona.

Mr. GALLINGER. Mr. President, I feel constrained to object to the printing of the names.

The PRESIDENT pro tempore. The Senator from New Hampshire objects.

Mr. ASHURST. I move that the names as well as the petitions be printed in the RECORD.

The PRESIDENT pro tempore. The Senator from Arizona moves that the body of the petitions and the names attached thereto be printed in the RECORD.

Mr. ASHURST. Mr. President, I make this motion in order to accentuate that there are two rules in this body, one rule for one Senator and another rule for another Senator. Last week several petitions were presented and the names of the petitioners appeared in the RECORD. Surely if that was an improper proceeding the objection should have been made at that time as well as against the petitions which I now have the honor to present.

The PRESIDENT pro tempore. The Senator from Arizona moves that the body of the two petitions, with the names attached thereto, be printed in the RECORD.

Mr. ASHURST. On that motion I call for the yeas and nays.

The yeas and nays were ordered.

Mr. BRISTOW. I should like to inquire what has been the custom in regard to these private petitions. I have received hundreds of them from the people of my State. I have filed them and I have never asked that the names be printed or the petitions except it was a memorial from the legislature.

Mr. GALLINGER. That is right.

Mr. BRISTOW. If it is customary for such petitions to be printed in the RECORD, of course every Senator ought to have that privilege when the request is made. But if it is not customary then no one ought to have the privilege. The same rule ought to apply to all. I am anxious to know what the practice has been before I vote upon this question.

Mr. ASHURST. Mr. President, I would request Senators to turn to page 2768 of the CONGRESSIONAL RECORD for Saturday, February 8, 1913, and in the lower left-hand column they will observe that a petition was presented by the distinguished junior Senator from Georgia [Mr. SMITH] upon identically the same subject and practically in the same wording as the petitions which I now present, and the names appended to that petition are printed in the RECORD.

So, I say, if in good faith Senators desire to see that rule enforced, why do they not object to another Senator presenting petitions of an exactly similar character and having them printed in the RECORD with the names attached?

I shall always proceed upon the idea that every Senator here is the equal of every other Senator, and so long as I have the honor to represent in part the State of Arizona here I shall never consent that a rule shall be relaxed in favor of one Senator and then restricted as against another Senator.

I again ask Senators to look at the lower left-hand column of the CONGRESSIONAL RECORD, page 2768, Saturday, February 8.

Mr. LODGE. Mr. President, as is well known to the Senate, under an order adopted by the Senate as far back as the Forty-ninth Congress it was provided—

That when petitions and memorials are ordered printed in the CONGRESSIONAL RECORD the order shall be deemed to apply to the body of the petition only, and the names attached to said petition or memorial shall not be printed unless specially ordered by the Senate.

I think the names are very rarely printed. In my experience I have very seldom known it to be done. It certainly can not be done except by unanimous consent. I doubt very much whether we can change a rule on motion. This is a rule, because it has been adopted by a majority of the Senate.

Mr. CULBERSON. Mr. President, I call the attention of the Senator from Massachusetts to the order which he read. It says that the names shall not be printed "unless specially ordered by the Senate," which would be by motion.

Mr. LODGE. Certainly; but no order of the Senate can be passed on the day on which it is offered.

Mr. CULBERSON. I am not so sure about that.

Mr. LODGE. If an objection is made, it goes over under the rule.

Mr. CULBERSON. No objection has been made.

Mr. LODGE. I am making no objection; I am only calling attention to it. I say I am very sure all Senators here are aware that the practice in that respect has been very uniform and that names are very rarely printed, because if we opened the RECORD to the printing of names we should have columns and columns filled with nothing but names of petitioners. My own experience is that that rule has been very strictly enforced. When there are only a few names on a petition permission has been given to print them, but I think it is extremely exceptional.

Mr. ROOT. Mr. President, I wish to say that I should be very sorry that the Senator from Arizona should rest under an impression that there is any discrimination. I want to say to him that I have received, I think it is no exaggeration to say, 10,000 names affixed to petitions and memorials from my constituency, which I have never considered that I was at liberty to have printed in the RECORD. I would have loaded the RECORD so that it would be difficult to find anything in it except names. My understanding was that I was not at liberty to ask to have them printed.

I am quite sure that if it appears a petition was printed with the names it was rather through inadvertence or because the bulk of it was not sufficient to make it a matter of any particular consequence.

Mr. SMITH of Georgia. Mr. President, the petition which was printed last Saturday was printed at my request. I had received many thousand names of a similar character, and many, many petitions of the same character. It was not my purpose to take part in the debate upon the subject, and I asked the consent of the Senate to print the petition, which was very short, and the short list of names attached to it, simply to occupy space enough in the RECORD to emphasize my interest in the subject. I suppose I have in my office a large drawer full of similar petitions, with the signatures attached, and I thought that that short list of names was not improper to go with the petition just as a sample of what I had received.

I certainly hope that the Senator from Arizona shall receive every privilege that I have received. I will gladly vote for his motion.

Mr. SMOOT. I notice that in the request made by the Senator from Georgia [Mr. SMITH], in presenting the petition to which he referred, he did not ask that the names of the petitioners be printed in the RECORD, but simply requested that the petition lie on the table and be printed in the RECORD.

Such requests are made every day when the Senate is in session. If the Senator from Georgia had asked that the petition be printed, and also that the names of the petitioners be inserted in the RECORD, there is no question but that there would have been objection, because we have petitions here, as has been stated, with tens of thousands of names, and it has been the universal rule in the Senate that the names signed to such petitions be not printed. I have not the least objection to the names of petitioners being known, if it were necessary, but I want to say to the Senator from Arizona [Mr. ASHURST] that it would make his case no stronger to have the names printed; it would merely encumber the RECORD, and therefore I hope that he will not insist that the names be printed in the RECORD. I will call his attention to the fact that he may scan the RECORD for years and years back, and he will find very few cases where the names of petitioners have been so printed.

Mr. GALLINGER. Mr. President, as I made the objection, and in view of some observations on the part of the Senator from Arizona [Mr. ASHURST], I wish to say that I am sure the Senator from Arizona will acquit me of any purpose of discrimination in matters of this kind.

Mr. ASHURST. I cheerfully do so.

Mr. GALLINGER. I certainly have endeavored always to see that the Senator from Arizona should have his due in this body, that he should have proper recognition, and that his State should also have due and proper recognition. I have never during my term of service here asked that names attached to petitions be printed in the RECORD. I have had petitions with thousands of names signed to them sent to me, but, remembering the rule of the Senate, I have refrained from asking that they be printed in the RECORD.

I hope the Senator from Arizona will not feel that there is a purpose to discriminate against him individually or against his State in the objection I have raised. I think, after the Senator has been here a while, he will see the necessity for this rule and the propriety of it. While it has not, perhaps, heretofore been observed with absolute strictness in certain instances, such as that which occurred a few days ago when the request was not made to print the names but where they went into the RECORD, I trust that the Senator will not feel that that establishes a precedent which ought to be controlling.

I think, upon reflection, the Senator from Arizona will realize that his statement that these are the names of distinguished men in his State will carry just as much weight as though they were printed in the RECORD, and I hope that he will not insist on the motion that he has made, but that he will withdraw it.

Mr. MYERS. Mr. President, I have very great respect for the Senator from New Hampshire [Mr. GALLINGER]. He has been very kind to me since I have been here. I respect his judgment, his knowledge, his experience, and his motives in all matters, and I am satisfied that his motive in this instance is a good one and fair-minded; but I believe in this particular case we could well afford to waive the rule, if it be one, allow these names to be printed, and let some Senator who is chairman of the Committee on Rules or of the Commitee on Printing, or whoever might have jurisdiction, give notice that henceforth he would object to such requests, demand the enforcement of the rule, and treat all alike. I do not suppose there are above 75 or 100 of the names of these petitioners, and I do not suppose the cost to print them in the RECORD will be 5 cents. I am sure that Arizona is proud to be in the Union. She was trying to get in for a long time. I am sure that her citizens will take pride in letting others know that they are now citizens of the United States, and I am sure that we are all proud to have Arizona in the Union. Who is there here who is not proud to have her in the Union?

Mr. GALLINGER. Mr. President, if my good friend from Montana will permit a word, he will remember that no Senator in the body commenced earlier to insist that Arizona ought to come into the Union than myself.

Mr. MYERS. I give the Senator from New Hampshire great credit for that and all due credit in other matters. I have great respect for the Senator, but I think——

Mr. ASHURST. Mr. President——

Mr. MYERS. I should like to finish.

Mr. ASHURST. Very well.

Mr. MYERS. I think we might well vote without objection, without delay, and without any disrespect to anybody, or to the rules, for that matter, to let these names be printed in the RECORD, and then if any Senator wants to invoke the inviolability of the rule hereafter on all alike, let it be known that it will be done; but as long as the names of petitioners from other States have been printed—and each State is supposed to be on an equal footing here—I believe in this one instance we might well permit these names to be printed. So I hope that the motion of the Senator from Arizona will prevail. I think it is nothing but fair and right and just.

Mr. ASHURST. Mr. President——

Mr. GALLINGER. Mr. President, will the Senator from Arizona permit me a moment?

The PRESIDENT pro tempore. Does the Senator from Arizona yield to the Senator from New Hampshire?

Mr. ASHURST. Certainly.

Mr. GALLINGER. Mr. President, in view of the statement made by the Senator from Montana [Mr. MYERS] that this will not be construed as a precedent and that at least some of us in the future will have the privilege, without being called in question, to invoke the rule, I propose, so far as I am concerned, to withdraw objection to the printing of the names in the RECORD.

Mr. ASHURST. Mr. President, I thank the distinguished Senator from New Hampshire [Mr. GALLINGER], and before I resume my seat will say that no Senator can serve here long without cultivating a deep affection for him. So far as the State of Arizona is concerned, that State does not forget that when my colleague [Mr. SMITH], who is now an honored Senator upon this floor, was a Delegate in the House the Senator from New Hampshire was one of the Senators who always stood by the Territory, now the State, of Arizona. I am very grateful to the Senator for withdrawing his objection. I have not questioned, and must not be understood as questioning, his motives in objecting to the names of the signers of these petitions being printed in the RECORD. I withdraw, if I may, the demand for the yeas and nays.

The PRESIDENT pro tempore. Does the Senator ask for the revocation of the order for the yeas and nays?

Mr. ASHURST. I do, Mr. President.

Mr. CLAPP. Before that is disposed of, Mr. President, I should like to say a word. I do not know that it will do any good, but I wish to state that some years ago the Senate adopted a rule whereby petitions, pension bills, claims bills, and private bills of all kinds should be filed with the Secretary to appear in the RECORD as introduced by the Senators presenting them, so as to avoid unnecessary delay of the Senate in the morning hour and taking the time of the Senate in presenting such matters. It seems to me that that rule ought to be observed.

Mr. GALLINGER. Regular order, Mr. President.

The PRESIDENT pro tempore. The Senator from Arizona asks unanimous consent for the revocation of the order for the yeas and nays. Without objection, it will be so ordered, and the petitions, together with the signatures, will be printed in the RECORD as requested.

The petitions are as follows:

To the UNITED STATES SENATE,
Care of the Hon. Henry F. Ashurst, Washington, D. C.:

We, the undersigned citizens of Graham County, State of Arizona, earnestly petition for the speedy passage of the Kenyon-McCumber interstate liquor bill, S. 4043 or S. 2310, to withdraw from interstate-commerce protection liquors imported into "dry" territory for illegal purposes.

J. R. Welker, Safford, Ariz.; C. C. Rickman, Safford, Ariz.; C. M. Layton, Thatcher, Ariz.; Andrew Kimball, Thatcher, Ariz.; G. R. Young, Safford, Ariz.; J. T. Owens, Safford, Ariz.; P. J. Jacobson, Safford, Ariz.; George H. Crosby, jr., Safford, Ariz.; L. R. Pace, Thatcher, Ariz.; Loule A. Nelson, Thatcher, Ariz.; F. B. Jacobson, Safford, Ariz.; A. E. Welker, Safford, Ariz.; J. T. Brown, Thatcher, Ariz.; S. N. Higgins, Safford, Ariz.; J. T. Childers, Thatcher, Ariz.; Orlando Jolley, Thatcher, Ariz.; S. A. Merrill, Safford, Ariz.; R. G. Layton, Safford, Ariz.; A. H. Layton, Thatcher, Ariz.; Frank Tyler, Thatcher, Ariz.; John N. Morris, Safford, Ariz.; David W. Birdno, Safford, Ariz.; Willie M. Birdno, Safford, Ariz.; Amelia Evans, Safford, Ariz.; Austin Evans, Safford, Ariz.; Geo. A. Zundel, Safford, Ariz.; T. B. Reed, Safford, Ariz.; John West, Safford, Ariz.; Wm. Morris, Safford, Ariz.; B. W. Wright, Safford, Ariz.; Heber Higgins, Artisa, Ariz.; Alvin Warner, Safford, Ariz.; U. J. Paxton, Safford, Ariz.; Charles Boggs, Safford, Ariz.; A. C. Peterson, Thatcher, Ariz.; D. L. Ridgway, Safford, Ariz.; T. C. Shaeffer, Safford, Ariz.; C. T. Reynolds, Safford, Ariz.; J. H. Larson, Thatcher, Ariz.; Sam J. Paxton, Safford, Ariz.; G. L. Young, Safford, Ariz.; John M. Barnhart, Globe, Ariz.; J. J. Chamberlain, Safford, Ariz.; M. J. E. Ringer, Safford, Ariz.; J. H. Carlton, Thatcher, Ariz.; Lee Carlton, Safford, Ariz.; Geo. S. Huarus, Safford, Ariz.; Ezra Madsen, Safford, Ariz.; M. E. O'Bryan, Safford, Ariz.; Geo. Catlett, Safford, Ariz.; C. W. B. Link, Safford, Ariz.; Geo. A. Hoopes, Thatcher, Ariz.; G. F. Houck, Safford, Ariz.; O. P. Merrill, Safford, Ariz.; M. M. Crandall, Safford, Ariz.; M. R. Crandall, Safford, Ariz.; R. H. Freestone, Safford, Ariz.; Albert Norris, Safford, Ariz.; W. F. Scarlett, Safford, Ariz.; C. W. Scarlett, Safford, Ariz.; W. R. Chambers, Safford, Ariz.; Elam Olsen, Safford, Ariz.; Robt. L. Nash, Safford, Ariz.; L. A. John, Safford, Ariz.; Frank Nelson, Safford, Ariz.; Geo. Goodman, Safford, Ariz.; D. B. Williams, Safford, Ariz.; Hartley Thomas, Safford, Ariz.; H. W. Brown, Safford, Ariz.

REPORTS OF COMMITTEES.

Mr. ROOT, from the Committee on the Library, to which was referred the bill (S. 6062) for the preparation of a plan for the erection of a foundation and pedestal on ground belonging to the United States Government, in the city of Washington, upon which to place a memorial or statue, to be furnished by the State of Pennsylvania, of Maj. Gen. George Gordon Meade, reported it with amendments and submitted a report (No. 1202) thereon.

Mr. WARREN, from the Committee on Appropriations, to which was referred the bill (S. 8414) to authorize aids to navigation and other works in the Lighthouse Service, and for other purposes, asked to be discharged from its further consideration and that it be referred to the Committee on Commerce, which was agreed to.

Mr. CURTIS, from the Committee on the District of Columbia, to which was referred the bill (H. R. 6083) to amend an act entitled "An act for the widening of Benning Road, and for other purposes," approved May 16, 1908, reported it with amendments and submitted a report (No. 1203) thereon.

THE FRANCIS GIRARD GRANT.

Mr. THORNTON. From the Committee on Private Land Claims I report favorably without amendment the bill (H. R. 11478) to quiet title and possession with respect to a certain unconfirmed and located private land claim in Baldwin County, Ala., in so far as the records of the General Land Office show said claim to be free from conflict, and I submit a report (No. 1201) thereon. I call the attention of the Senator from Alabama [Mr. JOHNSTON] to the bill.

Mr. JOHNSTON of Alabama. This is a local measure which has been passed by the House, and I ask unanimous consent for its present consideration.

Mr. SMOOT. I should like to ask the Senator from what committee the bill was reported.

Mr. JOHNSTON of Alabama. The Committee on Private Land Claims.

Mr. GALLINGER. Let the bill be read for the information of the Senate.

Mr. SUTHERLAND. Mr. President, I dislike very much to object to the consideration of this or any other bill, but the Senator from Ohio [Mr. POMERENE] has given notice that he will address the Senate this morning on the Kenyon interstate liquor bill, which must be voted upon not later than 6 o'clock. A number of Senators desire to be heard upon that bill, and the time is barely sufficient.

Mr. JOHNSTON of Alabama. It will take only a few moments to pass this local bill.

Mr. SUTHERLAND. I do not know; it may take a good many moments. I have seen some of these matters that we were promised would take only a few moments take a long time. I therefore feel constrained to object.

The PRESIDENT pro tempore. Objection is made, and the bill will be placed on the calendar.

BILLS INTRODUCED.

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. CRAWFORD:

A bill (S. 8439) restricting the issuance of interlocutory injunctions to suspend the enforcement of the statute of a State or of an order made by an administrative board or commission created by and acting under the statute of a State; to the Committee on the Judiciary.

By Mr. WETMORE:

A bill (S. 8440) for the enlargement of the site and the erection of a new public building at Newport, R. I.; to the Committee on Public Buildings and Grounds.

By Mr. CHILTON:

A bill (S. 8441) authorizing the President to appoint Andrew Summers Rowan to be a colonel in the Army; to the Committee on Military Affairs.

A bill (S. 8442) granting a pension to Charles McCarthy; to the Committee on Pensions.

By Mr. STONE:

A bill (S. 8443) to authorize the St. Louis-Kansas City Electric Railway Co. to construct a bridge across the Missouri River at or near the town of Weldon Springs Landing, Mo.; to the Committee on Commerce.

By Mr. JONES:

A bill (S. 8444) to amend an act entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1899, and for other purposes," approved July 1, 1898; to the Committee on Public Lands.

By Mr. CRANE:

A bill (S. 8445) for the acquisition of a site and the erection thereon of a public building at Winchester, Mass.; to the Committee on Public Buildings and Grounds.

By Mr. BRADLEY:

A bill (S. 8446) granting an increase of pension to W. C. Jones (with accompanying papers); to the Committee on Pensions.

By Mr. BURNHAM:

A bill (S. 8447) for the relief of Martha Cutts Almy, and others; to the Committee on Claims.

A bill (S. 8448) granting an increase of pension to Joseph Cook; to the Committee on Pensions.

By Mr. McLEAN:

A bill (S. 8449) granting an increase of pension to Katharina Britsch (with accompanying papers); to the Committee on Pensions.

By Mr. SMOOT:

A bill (S. 8450) granting an increase of pension to Kate Hoyberger; to the Committee on Pensions.

By Mr. CLARK of Wyoming (for Mr. CLAPP):

A bill (S. 8451) to amend section 235 of the Criminal Code, act of March 4, 1909 (with accompanying papers); to the Committee on the Judiciary.

By Mr. SMITH of Michigan:

A bill (S. 8452) granting an increase of pension to Margaret W. Goodwin; to the Committee on Pensions.

By Mr. CLAPP:

A bill (S. 8453) granting a pension to Caroline Fust (with accompanying paper); to the Committee on Pensions.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. ROOT submited an amendment proposing to appropriate $53,800 to pay the allowances made to the Malambo fire claimants under article 6 of the treaty of November 18, 1903, etc., intended to be proposed by him to the general deficiency appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. BRISTOW submited an amendment proposing to appropriate $9,000 for the completion of the addition to the post office and courthouse at Salina, Kans., intended to be proposed by him to the sundry civil appropriation bill, which was ordered to be printed, and, with accompanying paper, referred to the Committee on Public Buildings and Grounds.

Mr. NEWLANDS submitted an amendment proposing to increase the appropriation for general repairs and improvements at the Indian school at Carson City, Nev., from $6,000 to $20,600, intended to be proposed by him to the Indian appropriation bill, which was referred to the Committee on Indian and ordered to be printed.

Mr. GALLINGER submitted an amendment proposing to appropriate $26,952 for grading and improving Sixteenth Street from Montague Street to the Military Road, etc., intended to be proposed by him to the District of Columbia appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. JONES submitted an amendment proposing to extend the act approved August 24, 1912, so as to apply to the Reclamation Service under the act known as the reclamation act of June 17, 1912, etc., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. BOURNE submitted an amendment proposing to appropriate $150,000 for continuing the construction of a wagon road and necessary bridges through Crater Lake National Park, Oreg., etc., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. WETMORE submitted an amendment proposing to appropriate $256,500 for the completion of the harbor of refuge at Point Judith, R. I., intended to be proposed by him to the river and harbor appropriation bill, which was referred to the Committee on Commerce and ordered to be printed.

Mr. CULBERSON submitted an amendment proposing to appropriate $1,185,000 for the construction and extension of a sea wall on land adjoining Fort San Jacinto, Galveston, Tex., intended to be proposed by him to the river and harbor appropriation bill, which was referred to the Committee on Commerce and ordered to be printed.

He also submitted an amendment proposing to appropriate $700,000 for improving the channel from Galveston Harbor to Texas City, Tex., intended to be proposed by him to the river and harbor appropriation bill, which was referred to the Committee on Commerce and ordered to be printed.

Mr. CRAWFORD submitted an amendment proposing to appropriate $20,000 to enable the President to propose and to invite foreign Governments to participate in an inernational conference for the purpose of considering plans for an international inquiry into the high cost of living, etc., intended to be proposed by him to the diplomatic and consular appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. STEPHENSON submitted an amendment authorizing the Secretary of the Treasury to place upon the books of the Treasury, to the credit of the portion of the Wisconsin Band of Pottawatomie Indians now residing in the States of Wisconsin and Michigan, the sum of $447,339, being the proportionate share of these Indians in annuities and moneys of the Pottawatomie Tribe, etc., intended to be proposed by him to the Indian appropriation bill, which was referred to the Committee on Indian Affairs and ordered to be printed.

Mr. LIPPITT submitted an amendment proposing to appropriate $150,000 for improving the Providence River and Harbor, R. I., etc., intended to be proposed by him to the river and harbor appropriation bill, which was referred to the Committee on Commerce and ordered to be printed.

Mr. FLETCHER submitted an amendment proposing to appropriate $600,000 for technical and clerical services in the purchase of equipment and supplies for collecting, maintaining, and making available to Federal, State, municipal, and hospital authorities and institutions of learning plans and descriptive matter of hospitals, asylums, etc., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. MARTINE of New Jersey submitted an amendment proposing to appropriate $6,000 for the instruction and employment of the blind of the Columbia Polytechnic Institute who are actual residents of the District of Columbia, etc., intended to be proposed by him to the District of Columbia appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

LEGISLATIVE, ETC., APPROPRIATION BILL (S. DOC. NO. 1065).

Mr. WARREN. I present a conference report, it being a partial agreement of the conferees on the legislative, executive, and judicial appropriation bill.

The PRESIDENT pro tempore. The report will be read.

The Secretary read as follows:

CONFERENCE REPORT.

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 26680) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1914, and for other purposes, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 31, 32, 33, 34, 35, 36, 40, 48, 51, 52, 70, 99, 100, 104, 105, 117, 118, 119, 125, 126, 127, 128, 132, 133, 141, 157, 158, 159, 175, 197, 198, 199, 202, 206, 207, 218, 219, 220, 221, 236, 241, and 242.

That the House recede from its disagreement to the amendments of the Senate numbered 1, 3, 4, 5, 6, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 28, 29, 30, 41, 42, 43, 46, 47, 49, 50, 54, 55, 56, 57, 58, 62, 63, 64, 65, 66, 67, 69, 71, 72, 73, 74, 75, 91, 92, 96, 97, 101, 102, 103, 107, 108, 109, 110, 111, 112, 120, 121, 122, 123, 124, 129, 130, 131, 134, 135, 136, 143, 144, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 176, 203, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 222, 227, 228, 229, 230, 231, 232, 233, 234, 237, and 238, and agree to the same.

Amendment numbered 20: That the House recede from its disagreement to the amendment of the Senate numbered 20, and agree to the same with an amendment as follows: In line 8 of the matter inserted by said amendment strike out "$3,500" and insert in lieu thereof the following: "$2,000, or so much thereof as may be necessary"; and the Senate agree to the same.

Amendment numbered 44: That the House recede from its disagreement to the amendment of the Senate numbered 44, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$74,525"; and the Senate agree to the same.

Amendment numbered 45: That the House recede from its disagreement to the amendment of the Senate numbered 45, and agree to the same with an amendment as follows: At the end of the matter inserted by said amendment insert the following: ": *Provided*, That no person shall be employed hereunder at a compensation in excess of $4,000 per annum"; and the Senate agree to the same.

Amendment numbered 53: That the House recede from its disagreement to the amendment of the Senate numbered 53, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$87,990"; and the Senate agree to the same.

Amendment numbered 59: That the House recede from its disagreement to the amendment of the Senate numbered 59, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$4,000"; and the Senate agree to the same.

Amendment numbered 60: That the House recede from its disagreement to the amendment of the Senate numbered 60, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$16,120"; and the Senate agree to the same.

Amendment numbered 98: That the House recede from its disagreement to the amendment of the Senate numbered 98, and agree to the same with an amendment as follows: In lieu of the matter inserted by said amendment insert the following: "For legislative expenses, namely: Salaries of Members, $216,000; mileage of Members, $6,500; salaries of employees, $5,160; printing of laws, $3,500; rent of legislative halls and committee rooms, $2,000; stationery, supplies, printing of bills, reports, and so forth, $3,500; in all, $42,260, to be immediately available"; and the Senate agree to the same.

Amendment numbered 106: That the House recede from its disagreement to the amendment of the Senate numbered 106, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$166,358"; and the Senate agree to the same.

Amendment numbered 113: That the House recede from its disagreement to the amendment of the Senate numbered 113, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$840"; and the Senate agree to the same.

Amendment numbered 114: That the House recede from its disagreement to the amendment of the Senate numbered 114, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$17,640"; and the Senate agree to the same.

Amendment numbered 115: That the House recede from its disagreement to the amendment of the Senate numbered 115, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$840"; and the Senate agree to the same.

Amendment numbered 116: That the House recede from its disagreement to the amendment of the Senate numbered 116, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$15,960"; and the Senate agree to the same.

Amendment numbered 137: That the House recede from its disagreement to the amendment of the Senate numbered 137, and agree to the same with an amendment as follows: In lines 3 and 8 of said amendment strike out "$31,200" and insert in lieu thereof "$30,000"; and the Senate agree to the same.

Amendment numbered 138: That the House recede from its disagreement to the amendment of the Senate numbered 138, and agree to the same with an amendment as follows: In lieu of the sum named in said amendment insert "$1,375"; and the Senate agree to the same.

Amendment numbered 140: That the House recede from its disagreement to the amendment of the Senate numbered 140, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$2,500"; and the Senate agree to the same.

Amendment numbered 142: That the House recede from its disagreement to the amendment of the Senate numbered 142, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$275,820"; and the Senate agree to the same.

Amendment numbered 145: That the House recede from its disagreement to the amendment of the Senate numbered 145, and agree to the same with an amendment as follows: In lieu of the matter inserted by said amendment insert the following: "one at $2,400"; and the Senate agree to the same.

Amendment numbered 146: That the House recede from its disagreement to the amendment of the Senate numbered 146, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$631,250"; and the Senate agree to the same.

Amendment numbered 174: That the House recede from its disagreement to the amendment of the Senate numbered 174, and agree to the same with an amendment as follows: In line 8 of the matter inserted by said amendment, before the word

"to," insert the following: "or so much thereof as may be necessary"; and the Senate agree to the same.

Amendment numbered 200: That the House recede from its disagreement to the amendment of the Senate numbered 200, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$30,000"; and the Senate agree to the same.

Amendment numbered 201: That the House recede from its disagreement to the amendment of the Senate numbered 201, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$36,000"; and the Senate agree to the same.

Amendment numbered 204: That the House recede from its disagreement to the amendment of the Senate numbered 204, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$25,000"; and the Senate agree to the same.

Amendment numbered 205: That the House recede from its disagreement to the amendment of the Senate numbered 205, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$7,000"; and the Senate agree to the same.

Amendment numbered 223: That the House recede from its disagreement to the amendment of the Senate numbered 223, and agree to the same with an amendment as follows: In lieu of the number proposed insert "eleven"; and the Senate agree to the same.

Amendment numbered 224: That the House recede from its disagreement to the amendment of the Senate numbered 224, and agree to the same with an amendment as follows: In lieu of the number proposed insert "twelve"; and the Senate agree to the same.

Amendment numbered 225: That the House recede from its disagreement to the amendment of the Senate numbered 225, and agree to the same with an amendment as follows: In lieu of the number proposed insert "nine"; and the Senate agree to the same.

Amendment numbered 226: That the House recede from its disagreement to the amendment of the Senate numbered 226, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$73,260"; and the Senate agree to the same.

Amendment numbered 239: That the House recede from its disagreement to the amendment of the Senate numbered 239, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$56,680"; and the Senate agree to the same.

Amendment numbered 240: That the House recede from its disagreement to the amendment of the Senate numbered 240, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$7,000"; and the Senate agree to the same.

On amendments numbered 2, 7, 8, 11, 23, 24, 25, 26, 27, 37, 38, 39, 61, 68, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 93, 94, 95, 139, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 160, 161, 162, 163, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, and 235 the committee of conference have been unable to agree.

F. E. WARREN,
GEO. PEABODY WETMORE,
LEE S. OVERMAN,
Managers on the part of the Senate.

J. T. JOHNSON,
A. S. BURLESON,
FREDK. H. GILLETT,
Managers on the part of the House.

Mr. WARREN. Mr. President, regarding the conference report, which has just been read, I ought to say to the Senate that it is only a partial agreement. There are numerous matters undecided, such as the Senate amendments concerning assay offices, surveyor general's offices, Indian matters, certain employees of the Senate, the police force of the Senate and House, and some other minor matters.

Mr. OVERMAN. And the Commerce Court.

Mr. WARREN. Yes; and the Commerce Court. Unless there is some other disposition proposed, I shall move that the Senate insist upon its amendments in disagreement and ask for a further conference with the House of Representatives.

The PRESIDENT pro tempore. The Chair will inquire of the Senator from Wyoming if it is his desire that the Senate shall now take action upon the report as presented?

Mr. WARREN. Yes.

The PRESIDENT pro tempore. The question is on agreeing to the conference report.

Mr. CRAWFORD. Mr. President, I have no doubt that this form of conference report is one that has been established and followed for a long time, but I must say that it is unsatisfactory to a Senator when a conference report comes in, to find the only reference made is that the conferees have agreed on amendments numbered 1, 2, 3, 4, 5, 6, 7, and so forth; have not agreed on amendments numbered 16, 17, 18, and 19; and have agreed on amendments numbered 23, 24, 25 and 26 with certain amendments. I am not criticizing the committee in this particular instance, but I am very much interested in this conference report, vitally interested in some portions of it, and I want to keep in touch with it. I want to know what the stage of the proceeding is, so that I can be on guard. I do not like to have a conference report adopted here as to amendments numbered 1, 2, 3, 4, 5, 6, and 7, and then skipping over amendments 12, 13, 14, and 15, and confirming amendments numbered 25, 26, and 29. I do not believe the average Member of the Senate, when he votes to confirm that kind of a report, knows very much about what he is doing.

Mr. WARREN. Mr. President, I will say to the Senator that we are proceeding in the course that has been followed for a great many years—more than a score of years. I do not consider that any report is finally and fully settled until the last item is settled, but it is sometimes of great assistance to the managers of the conference to have their work checked up so far as they have agreed and then endeavor to obtain agreements as to items left in disagreement.

Mr. CRAWFORD. Mr. President, I simply desire to give notice now that the attempt to close offices and interfere with necessary public business carried on for the public welfare in points throughout the West is not going to be confirmed here in the form of a conference report without a few remarks from one of the Senators from South Dakota, and they may take some time. I do not want a conference report perpetrating that kind of an injury to all of the northwest section of this country to be confirmed here as an agreement or disagreement to amendments numbered 1, 2, 3, 4, 5, and so forth.

Mr. CLARK of Wyoming. Mr. President, I should like to ask my colleague, the chairman of the committee, whether it has been the custom of the Senate to print partial reports, so that Senators may be advised as to what items have been disposed of in conference?

Mr. WARREN. The report as read will go into the RECORD, so that on to-morrow morning it will be before every Senator, and, in connection with it, he can consult the bill itself.

Mr. CLARK of Wyoming. Can we secure a copy of the bill with the amendments numbered, so that we may be able to understand exactly what has been agreed to?

Mr. WARREN. They can be furnished to the Senators from the desk.

Mr. SUTHERLAND. Mr. President, will not the Senator from Wyoming consent to let the matter go over until to-morrow morning?

Mr. WARREN. I am not holding it.

Mr. SUTHERLAND. I thought the Senator had moved to agree to the conference report.

Mr. WARREN. I will say to the Senator from Utah that if the report should be agreed to so far as it goes I should then ask that the Senate insist upon its amendments still in disagreement and ask for a further conference; but we have not yet arrived at that stage.

Mr. SUTHERLAND. But not to assent to the agreements already made?

Mr. WARREN. Well, Mr. President, that is a question for the Senate to decide. I think we are making more of a point on this matter, probably, than is necessary. The bill can not become a law until it is completed; and the acceptance of the report, so far as it goes, is simply one of the parliamentary stages.

Mr. SUTHERLAND. Some of us are very much interested in the report which has been made, and desire to be heard upon it. We have a special order assigned for to-day on a very important bill that ought to be discussed, and the time which is allowed for discussion on that measure is not sufficient. I hope, therefore, the Senator from Wyoming will permit this matter to go over until to-morrow morning, when we shall have time to discuss it.

Mr. LODGE. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Utah yield to the Senator from Massachusetts?

Mr. SUTHERLAND. I do, if I have the floor.

Mr. LODGE. Mr. President, I only want to say to the Senator that I think he is proceeding under a slight misapprehension as to the effect of agreeing to this report. Partial agreements of conferees do not bind. If we disagree to their report, we

can not amend it; we disagree to the whole report, and it goes back to conference, where the whole subject is open. Even if the conferees have agreed on everything but one item, they may come back on that item in order to get the instruction of the Houses. I do not understand that the partial agreements which we have been in the habit of presenting here in the least prevent their being discussed when the final report is made.

Mr. CLARK of Wyoming. No, Mr. President; that is not the point. The point is whether or not by agreeing to this partial report we do not give the conferees to understand that, so far as that part of the report is concerned, they have the consent of the Senate.

Mr. LODGE. Undoubtedly that is true.

Mr. CLARK of Wyoming. Yes.

Mr. LODGE. Though technically it does not bind.

Mr. CLARK of Wyoming. I know; but in reality it does.

Mr. LODGE. In that sense it undoubtedly gives the conferees the right to say that the Senate favors those items, and that has been the practice.

Mr. SUTHERLAND. Mr. President, that is the thing to which I object. I think Senators should be heard upon these matters before the conferees have any understanding on the subject.

Mr. LODGE. They will be just as open after the final report as they are now.

Mr. WARREN. Mr. President, if the Senator will permit me, I have not counted the amendments in this bill. Last year in the similar bill there were something over 500 of them. They are largely matters of a clerk more or less here and there, or one or two or three hundred dollars more or less here and there as to salary, and are hardly matters that the Senate in Committee of the Whole would care to take up.

If the Senator will permit me, I will state exactly what is still in disagreement. I think it ought to go into the RECORD, so that if it comes up to-morrow or at any other time we will know more about it.

Beginning at the opening of the bill, the first disagreement is upon inserting the name of Woodbury Pulsifer as one of the employees.

The second matter is that of increased pay for two employees, Loeffler and Keller.

The third is that of the Capitol police force, which the House has seen fit to cut in two. It allows only one-half of the force that is now employed under the joint management of the Sergeants at Arms of the House and of the Senate.

The next matter is that of the insertion of the name of George H. Carter, the printing clerk. Objection is made to naming him.

The next is the payment of $300 to a lady, Miss Etta J. Giffin.

The next matter is that of the employment of an $1,800 clerk that we proposed, in addition to what the House proposed, in the copyright office of the Library of Congress.

The next item is the freight on bullion and coin, for which the House allowed only $15,000 instead of $75,000 or $100,000 as formerly, and which the Senate increased to $40,000.

The next matter is the number of internal-revenue collection districts, which we reduced by four last year. Such a reduction has not seemed to be satisfactory, and we seek to put them back to the former number. That is in disagreement.

Then there is the entire list of mints and assay offices, which the House cut out, taking out all of the assay offices but one in the Northwest. Those are still in disagreement.

Then there is the matter of $5,000 for the National Aerodynamical Laboratory Commission.

There is a disagreement of about $18,000 in regard to clerks for the Indian office, which the Senate seeks to provide for the examination of titles and distribution of amounts due to the heirs of deceased Indians. It is part of the Indian service which the department says is necessary.

The next is the small matter of two or three employees in the Patent Office.

Then comes the matter of surveyors general and their clerks. The House has sought to do away with one of the offices of the surveyors general, and to cut down very largely from the estimates for all the others. The Senate has put in, in most cases, the amount estimated for, but has never exceeded the amount called for by the estimates, and has put back the one office which the department states is as necessary as any surveyor general's office in the United States—the one which is for South Dakota and Nebraska jointly.

Then comes the matter of the Commerce Court. I think it is generally conceded that the Commerce Court must be provided for until the end of the fiscal year. I think it is more a question of whether it shall be taken care of in this bill or in a deficiency bill. But since it was estimated for in this bill, and has been provided for, we introduced it here and the Senate indorsed it. So the managers of the conference on the part of the Senate have felt that they should maintain it.

Those are the items in disagreement, and all the items.

Mr. BRISTOW. Mr. President, the Senator has given the items which are in disagreement; but what are the items that we are agreeing to? That is what I am interested in. I am not so much interested in what the conferees have not yet agreed upon as what we are now ratifying.

Mr. WARREN. I hardly think the Senator would want me to go into those generally, because there are perhaps a couple of hundred of them. The bill itself will show the Senator what they are.

Mr. BRISTOW. Why should it not be printed, and then go over, and be taken up to-morrow morning?

Mr. WARREN. I have no objection whatever to that course.

Mr. CRAWFORD. Let us have it printed.

Mr. WARREN. Mr. President, since there seems to be a general wish that the report should be printed, and that we should proceed no further upon it at the present time, I shall not make the motion which I indicated I desired to make, for a further conference, but shall let the matter go over and take it up to-morrow morning.

The PRESIDENT pro tempore. The report will be printed.

Mr. CRAWFORD. Does it follow as a matter of course, then, that it will be printed?

Mr. WARREN. Oh, yes.

The PRESIDENT pro tempore. The Chair has just announced that it will be printed.

DEPOSIT OF PUBLIC MONEYS IN NATIONAL BANKS.

Mr. POINDEXTER. I offer a resolution, which I ask may be read.

The Secretary read the resolution (S. Res. 462), as follows:

Resolved by the Senate of the United States, That the Secretary of the Treasury be, and he hereby is, directed to transmit to the Senate any information in his possession touching his authority to make the order for the disposition, custody, and disbursement of the public moneys embodied in Department Circular No. 5, issued by said Secretary of the Treasury on January 9, 1913. Also to transmit to the Senate any information in his possession touching the effect of said order upon the system and mode of receiving, caring for, handling, and disbursing said public moneys in effect prior to the issuance of said order, and especially what change in said system was effected by said order; also any information in his possession as to the manner and in what proportion the public moneys specified in said order are distributed among the several national banks therein referred to, and to designate what, if any, additional banks have been designated as Government depositories on account of the change in the custody of the public moneys specified in said order, and where the same are located; also the amount of daily receipts of the Government which have been deposited in banks since said order went into effect, and what, if any, security therefor or interest thereon has been required by said Secretary of the Treasury from the said banks, and what amount or proportion of said daily receipts has been deposited in banks in New York City; also to state the monthly average amount of all funds in the custody of disbursing officers which said order requires to be deposited in banks, but which prior thereto were deposited with the Treasurer or an Assistant Treasurer of the United States; also what is the average monthly amount of United States disbursing officers' accounts in New York City.

Mr. POINDEXTER. I desire to make a brief statement in regard to the resolution.

The PRESIDENT pro tempore. The Senator from Washington will proceed.

Mr. POINDEXTER. The statement of the United States Treasury at the close of business February 7, 1913, shows that the customs receipts of the United States for that day amounted to $1,076,175. This order, designated as circular No. 5, changes the mode of caring and keeping and the place of deposit of these daily receipts and will change the place of deposit of public moneys during the present fiscal year, ending June 30, 1913, according to the report of the Treasury, to the amount of $201,551,299.

This order was made without any legislation authorizing or directing it. From statements in the public press I have noticed that the Secretary of the Treasury claims that it is authorized by law. It is my judgment that it was not authorized by law. There has been no change in the law in that regard for a great many years. If it is authorized by law, and if the Secretary of the Treasury, in his discretion, can control and direct the place of deposit, as between the Public Treasury or subtreasury of the United States and a private bank, of public moneys amounting to over $200,000,000 a year, the law ought to be changed; and the Senate ought to have full information from the Secretary of the Treasury as to his motives and purposes in making such an order.

On the other hand, if the law does not authorize this order, which has created a great deal of comment throughout the country and more or less astonishment, then it is perfectly obvious that it is a matter of the most serious import, and one upon which the Senate should be immediately informed and

which undoubtedly would call for some action of a pronounced character by Congress.

I will detain the Senate for only a few moments. The order in substance is contained in the first paragraph of the so-called circular No. 5, which is as follows:

For the purpose of bringing the ordinary fiscal transactions of the Federal Government more nearly into harmony with present business practices, it has been determined that the daily receipts of the Government shall be placed with the national-bank depositaries to the credit of the Treasurer of the United States. Disbursements will be made by warrant or check drawn on the Treasurer, but payable by national-bank depositaries, as well as by the Treasury and subtreasuries, in accordance with the following regulations.

It proceeds to set out certain regulations as to accounts, the manner of issuing checks and warrants by which these moneys shall be disbursed.

Mr. President, the statutes of the United States expressly require that the customs receipts shall be deposited with the Treasurer of the United States or with a subtreasurer. The statute also requires that moneys intrusted to the disbursing officers shall be kept with the Treasurer of the United States or in a subtreasury, or, in places where there is no subtreasury, may be deposited in a national bank depositary.

So far as I am informed, and I think that I am informed upon the subject, there is no subsequent statute which has changed the law which I have just stated and which has been in effect for almost a hundred years.

The National City Bank, of New York City, issued a circular dated February, 1913, commenting upon this order of the Secretary of the Treasury. It was prepared no doubt by a financial expert connected with the National City Bank, which is one of the Standard Oil banks. This circular, which has been published throughout the country, says:

When the Treasury Department was established 124 years ago it was made the duty of the Secretary of the Treasury to superintend the collection of the revenues. Nearly 60 years later it was made a felony for any officer of the United States to deposit in any bank any portion of the public moneys intrusted to him. This drastic legislation, which had as its foundation the unfortunate experience of the Government with the banking business, was partially repealed by the national currency act and the national bank acts of 1863 and 1864, by permitting internal-revenue receipts to be deposited in banks. It was not until 1907 that Congress permitted customs receipts to be so deposited. One of the important features of Secretary MacVeagh's plan now is to take advantage of this act.

I think that a search of the banking and currency act of 1907 will fail to disclose that there is a word or syllable in it which amends or repeals the laws existing prior to that time as to the deposit of public moneys in the hands of the disbursing officers or as to the deposits of money received from customs.

It is evident that some contention is made by the Secretary of the Treasury that the law of 1907 authorized this change. I want briefly to call attention to the manner and the form in which the order is made and in which the business is transacted for the purpose of showing that the Secretary of the Treasury knows that the law is still in force which requires these funds to be deposited in the Treasury or a subtreasury, and that it is simply a sham system of keeping accounts by which under the name of keeping accounts with the Treasurer of the United States in fact the accounts are kept with private banks. There is one peculiar statement contained in the circular of the National City Bank which I have just read. I will read some of the preceding sentences:

The method of making disbursements which has just been adopted also marks the passing of the old order as to expenditures.

There are two separate and distinct propositions involved in this circular. One of them is as to the place of deposit of the customs receipts; the other, a distinct matter, is the place of deposit of the funds intrusted to and under the custody of the disbursing officers:

For nearly 50 years the Treasury Department has been operating under a statute requiring disbursing officers to keep their accounts with the Treasurer of the United States, an assistant treasurer, and in places where there is no treasurer or assistant treasurer with a national-bank depository. This has been strictly construed to prevent a disbursing officer from having an account with a national-bank depository in a city where there is a subtreasury.

This is the interesting statement, in connection with the preceding, contained in the circular issued by the National City Bank:

It is interesting to note—

The circular says—

that the change which has been made is sustained by the same section of law which was supposed to prohibit just what is now being done.

Mr. SUTHERLAND. Mr. President, will the Senator permit me to interrupt him? Some little time ago I objected to the consideration of a bill presented by the Senator from Alabama upon the ground which I then stated. I did not know that the resolution which the Senator has proposed would lead to debate or I should have asked that it go over under the rule.

I call the attention of the Senator to the fact that at 6 o'clock to-day we are obliged to vote upon the pending measure, and there have been notices given already that Senators would address the Senate upon that matter. Unless it can be taken up within a reasonable time some of those who desire to be heard will be denied the privilege. I hope under those circumstances the Senator will permit the resolution to lie over.

Mr. POINDEXTER. I do not anticipate—I trust, at least—that there will not be any objection to the resolution. The statement which I wish to make is very brief. I would have concluded it in five minutes.

Mr. SUTHERLAND. In order to be consistent with the Senator from Alabama, I am obliged to ask that the resolution shall lie over under the rule.

The PRESIDENT pro tempore. Under objection, it necessarily does so.

Mr. POINDEXTER. I give notice, then, that I shall call it up to-morrow, and complete my remarks at that time.

The PRESIDENT pro tempore. The resolution will go over under the rule.

MEMORIAL ADDRESSES ON THE LATE REPRESENTATIVE SYLVESTER CLARK SMITH.

Mr. PERKINS. I desire to give notice that on Saturday, March 1, 1913, I shall ask the Senate to consider resolutions commemorative of the life and character of Hon. SYLVESTER CLARK SMITH, late a Member of the House from California.

MEMORIAL ADDRESSES ON THE LATE REPRESENTATIVE ELBERT H. HUBBARD.

Mr. CUMMINS. I give notice that on Saturday, March 1, 1913, I shall call up the resolutions commemorative of the life and character of Hon. ELBERT H. HUBBARD, late a Member of the House from Iowa.

BUREAU OF NATIONAL PARKS.

Mr. SMOOT. I desire to give notice that I will address the Senate on Thursday, the 13th, after the routine morning business, upon the bill (S. 3463) to establish a bureau of national parks, and for other purposes.

INTERSTATE SHIPMENT OF LIQUORS.

Mr. GALLINGER. I ask that House bill 17593 be laid before the Senate.

The bill (H. R. 17593) to divest intoxicating liquors of their interstate commerce character in certain cases was read twice by its title.

Mr. GALLINGER. Mr. President, this bill is very similar in its nature to the so-called Kenyon bill, and I venture to ask unanimous consent that it be now considered.

Mr. SUTHERLAND. I object, Mr. President.

The PRESIDENT pro tempore. The Senator from Utah objects.

Mr. GALLINGER. Let it be referred to the committee, then.

The PRESIDENT pro tempore. The bill will be referred to the Committee on the Judiciary.

Mr. GALLINGER subsequently said: When House bill 17593 was laid before the Senate I suggested that it be referred to the Committee on the Judiciary. I ask unanimous consent that the action of the Senate be rescinded and that the bill be allowed to lie on the table for the present.

The PRESIDENT pro tempore. The Senator from New Hampshire asks unanimous consent that the bill indicated by him, which was previously referred to the Judiciary Committee, may now lie on the table. Is there objection? It will be so ordered, without objection.

REGULATION OF PLACES OF AMUSEMENTS—VETO MESSAGE (S. DOC. NO. 1066).

The PRESIDENT pro tempore laid before the Senate the following message from the President of the United States, which was read, and, with the accompanying papers, referred to the Committee on the District of Columbia and ordered to be printed:

To the Senate:

I return herewith, without approval, Senate bill 2600, entitled "An act to authorize the Commissioners of the District of Columbia to prevent the exhibition of obscene, lewd, indecent, or vulgar pictures in public places of amusement in the District of Columbia."

Upon inquiry I find that the requirement of section 2, that all picture films shall be submited to the District Commissioners for investigation and approval before exhibition, is, under present conditions, not only unnecessary but incapable of enforcement without unduly encroaching upon the services of

the police force of the District. In this connection I wish to call your attention to the accompanying letter to the Attorney General on the subject from the District Commissioners, dated February 3, 1913.

I beg to suggest that the purpose of this bill may be accomplished by a statute merely prohibiting, under a penalty, the exhibition of objectionable pictures, without the requirement of prior investigation and approval by the commissioners before exhibition, and to recommend the passage of such a measure.

WM. H. TAFT.

THE WHITE HOUSE, *February 10, 1913.*

The PRESIDENT pro tempore. The question is, Shall the bill pass, the objections of the President of the United States to the contrary notwithstanding?

Mr. GALLINGER. Mr. President, that bill which the President has vetoed was introduced and earnestly favored by me, and it passed both Houses of Congress. The Commissioners of the District of Columbia gave their approval of the bill. It seems to me that the suggestion of the Attorney General is not a wise one, and yet it is proper that the committee should give it consideration.

I regret that the bill has been vetoed, inasmuch as I believe the proposed law would have done much toward protecting the youth of Washington from witnessing pictures that are certainly not calculated to improve their morals or to contribute to their education along sound lines. No instrumentality can be imagined that is better calculated to corrupt the morals of the young than indecent pictures, and the bill was intended to protect them from that danger.

I move that the veto message and the accompanying bill be referred to the Committee on the District of Columbia.

The motion was agreed to.

RIGHT OF WAY IN YELLOWSTONE NATIONAL PARK.

Mr. MYERS. Mr. President, I had intended at this time to ask unanimous consent for the immediate consideration of the bill (S. 3130) to authorize the Secretary of the Interior to permit the Conrad-Stanford Co. to use certain lands, but I understand——

Mr. SUTHERLAND. Mr. President, I object.

Mr. MYERS. I have not asked for the consideration of the bill, Mr. President.

Mr. SUTHERLAND. Oh, I beg pardon.

Mr. MYERS. I said I had intended to ask it, but the Senator from Utah [Mr. SUTHERLAND] stated awhile ago that a number of Senators desire to speak immediately after the close of the morning business on the Kenyon bill. I had observed that it was set down to be taken up at 3 o'clock, but I am told that there are a number of Senators who desire to speak on it before that time. I have no wish whatever to interfere with the desire of any Senator to address the Senate on that or any other subject, but I ask at this time unanimous consent that an order be made that Senate bill 3130 be taken up for consideration immediately after the final disposition of Senate bill 8033, the Connecticut River dam bill, which comes up to-morrow.

Mr. SMOOT. I simply desire to state to the Senator from Montana that there are so many unanimous-consent agreements now given we can hardly tell where they are going to lead; that there is not a single appropriation bill which has passed both Houses and been agreed upon by the conferees; and I certainly shall object at present to any unanimous-consent agreement for consideration of a bill, unless it is provided it shall not interfere with appropriation bills and conference reports.

Mr. MYERS. Mr. President, I will add that qualification to my request, providing that it shall not interfere with the consideration of appropriation bills or conference reports.

Mr. GALLINGER. Or a previous unanimous-consent agreement.

Mr. SWANSON. And I should like——

Mr. SUTHERLAND. For the present I object to the request.

The PRESIDENT pro tempore. Objection is made.

Mr. MYERS. I have been trying for a long time to get up this bill. It is manifest that I can not get it up in any other way. It is on the calendar, but whenever it is called on the calendar for objected bills there is objection made, which is all right. It is the privilege of any Senator to object, of course. The calendar is never called so that the bill can be reached on its own right, and I know of no other way of getting the bill before the Senate.

Therefore I move that, notwithstanding the objection, an order be made now that the bill be taken up for consideration immediately after the final disposition of Senate bill 8033, providing that it shall not interfere with the consideration of appropriation bills or conference reports.

Mr. SMOOT. Is that motion in order?

The PRESIDENT pro tempore. The Chair will state that it would require a two-thirds vote. The Senate can make a special order at any time, but a special order requires a two-thirds vote.

Mr. MYERS. It requires only a majority vote to consider it, does it not?

The PRESIDENT pro tempore. But to make a special order requires a two-thirds vote.

Mr. MYERS. The bill was introduced nearly two years ago, in the summer of 1911, and I am about despairing of ever getting it to a vote. I will withdraw the motion.

INTERSTATE SHIPMENT OF LIQUORS.

Mr. CURTIS. Mr. President, I had expected to submit some remarks in favor of the Kenyon-Sheppard bill, but on account of an important committee meeting on an appropriation bill it will be impossible for me to remain during the discussion and to submit remarks. I therefore ask unanimous consent to print the following excerpts from the Central Christian Advocate, which give strong reasons for the passage of the bill.

The PRESIDENT pro tempore. Is there objection to printing in the RECORD the matter indicated by the Senator from Kansas? The Chair hears none.

The matter referred to is as follows:

[Excerpts from the Central Christian Advocate, published at Kansas City, Mo., Claudius B. Spencer, D. D., editor, December 25, 1912.]

INTERSTATE COMMERCE IN INTOXICATING LIQUORS.

To the people of Kansas:

"For your altars and your firesides." It has ever been the sentiment of humanity that the most sacred treasures are the altars and firesides of the people. This it is which has written the most sublime chapters of history. For their altars and firesides men have willingly shed their blood. The sentiment is the fountain of patriotism; it is the basis of laws. To stand by and see their altars and firesides jeopardized is an act unworthy of real men.

Citizens of Kansas, the interstate-commerce laws shield men—of that grade of character capable of doing it—in shipping into your borders intoxicating liquors which is prohibited, under the most severe penalties, by your laws. This Federal shelter you feel to be not only a nullification of yours laws, but also an attack upon your firesides and altars. And, citizens of Kansas, you believe the Kenyon-Sheppard bill, Senate No. 4043, will give you relief from such Federal protection of men who in your own State are branded as criminals and punished by sentence to State prison.

NULLIFYING THE STATE LAWS.

We call your attention, citizens of Kansas, to the action taken by the Southern Sociological Congress, held a little time ago in Nashville, Tenn. The question of this nullification of State laws relating to the prohibition of the sale of intoxicating liquors was under consideration. The following action was taken without a dissenting voice:

"Throughout the Southern States determined opposition to this traffic has resulted in the enactment of laws by which five entire States and approximately 90 per cent of the territory of the remaining States of our southland now forbid the sale of intoxicating liquors.

"Under the present Federal law the States are powerless to prevent the importation of intoxicating liquors from other States, even when consigned to notorious violators of law and for the avowed purpose of sale contrary to the laws of the State. Under our system of government a citizen of one State should not be given privileges and opportunities under the protection of interstate commerce which the people have wisely denied to their own citizenship within the State.

"Therefore, in view of all these things, be it

"*Resolved*, That it is unjust to States having prohibited the liquor traffic, in whole or in part, for the Federal Government to permit people in other States to ship these States alcoholic liquors intended to be used in violation of their laws; and we call upon Congress to pass promptly the Kenyon-Sheppard-Webb-McCumber bill, which will permit the States to enforce their own laws by preventing the introduction of liquors from other States into their territory for unlawful purposes.

"We insist that the present situation is both anomalous and intolerable. The fact that outside and irresponsible citizens of other States should, under the guise and protection of interstate commerce, have the power to furnish the bootlegger and the blind tiger with their supplies of liquors by means of which they carry on their unlawful traffic is repugnant to every sentiment of justice and of fair dealing between the Federal Government, under its delegated commercial power, and the States, under their inherent powers of police. We insist that no political issue transcends this in importance, going directly, as it does, to that relationship of equality and comity which should be established and maintained between them under our dual system of government."

The Southern Sociological Congress then unanimously passed this resolution:

"We therefore urge Senators and Representatives in Congress to support, both with their influence and votes, the pending bill above named and vigorously to oppose the efforts of the liquor interests of the country to delay and defeat it."

ANALYSIS OF KENYON-SHEPPARD BILL.

Citizens of Kansas, lest it may have escaped you, we beg to ask you, What is this Kenyon-Sheppard bill, S. 4043? Stripped of its verbiage, to use the summary of Senator SANDERS of Tennessee, it is:

"*Be it enacted, etc.*, That the shipment of intoxicating liquors from one State into any other State by any person to be received or used in violation of any law of such State, is hereby prohibited."

The bill is not a prohibition bill. We might wish it were; but it is not. It does not prevent a man from drinking intoxicating liquor. It has no penalties. It simply lifts the shelter which the Federal Government has placed around men of such character as to ship to men in prohibition States intoxicating liquors to be sold contrary to and in defiance of State laws.

Precisely what the bill is intended to stop is set forth in this circular sent into Idaho, a dry State, by a liquor firm in Salt Lake City. In his speech in the Senate, December 17, Senator KENYON, author of the bill, held aloft the circular; it was illuminated with pictures of Uncle

Sam, some ten in number, in various poses, and at the top was this announcement, "Uncle Sam our partner." The circular was then read by Senator KENYON. We reproduce the circular:

"UNCLE SAM IS OUR PARTNER.

"THE FRED J. KIESEL CO., OGDEN, UTAH.
"*Mail Order Liquor Department.*

"To meet the surprisingly increasing demand from dry Idaho counties and other dry sections we have increased our bottled in bond and blended whisky stock and are ready to supply all demands from the thirsty, be they bankers, merchants, tradesmen, laborers, ministers, bootleggers, or even politicians, from the governor down to the least official.

"Our list includes the following well-known brands: Sunny Brook, Old Crow, Old Kissel, Hermitage, Our Joe, Guckenheimer, Paul Jones, and Chicken Cock.

"Pabst Blue Ribbon, 'the Beer of Quality.' Idan-ha, the monarch of table and medicinal waters; also finest of wines and brandies from our own winery at Sacramento, Cal.

"Price lists furnished on application. Address all communications to the Fred J. Kiesel Co., Mail Order Department, Ogden, Utah."

This circular exactly sets forth what "partnership" it is the Kenyon-Sheppard bill is intended to dissolve.

CONDITIONS DEMANDING THE KENYON-SHEPPARD BILL.

We wish to leave no stone unturned to show the people of the West that this statement of the Salt Lake defiers of the Idaho laws is correct. We may be permitted to quote from some remarks of the senior Senator from Georgia upon this subject:

"Briefly stated, the conditions which demand the passage of this or some similar bill are these: Every State in which the traffic in liquors has been prohibited by law is deluged with whisky sent in by people from other States under the shelter of the interstate-commerce law. There are daily trainloads of liquors in bottles, jugs, and other packages sent into the State consigned to persons, real and fictitious, and every railway station and every express company office in the State are converted into the most extensive and active whisky shops, from which whisky is openly distributed in great quantities. Liquor dealers in other States secure the names of all persons in a community, and through the mails flood them with advertisements of whisky, with the most liberal and attractive propositions for the sale and shipment of the same. Freed from the expense of the middleman, the distiller or dealer in other States is enabled to sell to the individual in the prohibition State at a less price than the purchaser formerly paid to the domestic whisky dealer. It is evident that under such circumstances the prohibition law of a State is practically nullified, and intoxicating liquors are imposed upon its people against the will of the majority."

CHARACTER OF COMMODITY AIMED AT.

There is another phase: What is the character of the business such States as Kansas, Oklahoma, North Dakota, Tennessee have driven from the ranks of respectable and permissible occupations? We will make no appeal to sentiment. We will accept the definitions made by the Supreme Court of the United States, a tribunal incapable of being swerved by rhetoric or sentimentality—the Supreme Court of the United States, in a number of cases, with reference to this. In the case of Welsh *v.* State (126 Ind., 72) the court says that—

"The license law treats the traffic as dangerous, as dangerous to public and private morals, and as dangerous to the public peace and the good order of society."

In The State *v.* Gerhardt (145 Ind., 439) the court says:

"The unrestricted traffic in intoxicating liquors has been found by sad experience to be fraught with great evil and to result in the most demoralizing influence upon private morals and the peace and safety of the public."

In Mugler *v.* Kansas (123 U. S., 623, 685–662) the Supreme Court of the United States said:

"It is not necessary for the sake of justifying the State legislation now under consideration to array the appalling statistics of misery, pauperism, and crime which have their origin in the use or abuse of ardent spirits. * * * For we can not shut out of view the fact within the knowledge of all that the public health, the public morals, and the public safety may be endangered by the general use of intoxicating drinks; nor the fact established by statistics acceptable to everyone that the idleness, disorder, pauperism, and crime existing in the country are in some degree at least traceable to this evil."

Again, the Supreme Court of the United States, in Crowley *v.* Christensen (137 U. S., 86), says:

"By the general concurrence of opinion of every civilized and Christian community there are few sources of crime and misery to society equal to the dramshop, where intoxicating liquors in small quantities, to be drunk at the time, are sold. Every State shows a greater amount of crime and misery attributable to the use of ardent spirits obtained at these retail liquor saloons than to any other source."

This is the business which the States of Kansas and Oklahoma and others have had the moral courage to rise up and abolish. It is abhorred by the people. To engage in it is punishable by sentence to State's prison and the striped clothes of a convict. And this is the business which is defiantly carried on under the protection of Federal decisions as to interstate commerce, the only requisite being that a man shall ship his goods from a point outside of the State, he then being free to laugh at the State laws, which would send him to State's prison, to scorn, seeing "Uncle Sam is his partner," by such protection. The Kenyon-Sheppard bill deprives the shipper of that impenetrable partnership.

THE LIQUOR PEOPLE AND THE BILL.

How the liquor people regard this bill may be seen from the following:

[From Bonforts Wine and Spirit Circular, Nov. 25, 1912.]

"Congress convenes December 2. On December 16 the Kenyon bill (S. 4043) will be made the special order of business. This bill is the most dangerous measure ever aimed at the liquor traffic. What have you done to defeat it? Your Senator and your Congressman are your representatives and must listen to your protest. This bill must be killed. It will not die unless Senators and Congressmen are made aware of the strong opposition to it. You can do a great deal to help defeat this bill. The passage of the Kenyon bill will be the biggest victory ever won by the Anti-Saloon League. What are you going to do about it?"

[Circular being sent out to liquor dealers by David Wise & Co., distillers and wholesale liquor dealers of Chicago.]

"EXTREMELY IMPORTANT.

"On December 16 next there will come up in the United States Senate at Washington, D. C., a bill known as the 'amended Kenyon bill,' No. 4043. This bill would take liquors out of interstate commerce. This means that you could not have whisky, wines, beer, or other liquor shipped to you, either by freight or express, if you live in a territory where the sale of liquor is forbidden.

"Please act quickly. Get as many well-known and prominent citizens as you can to write to your United States Senators, protesting against the passage of this bill. Letters of protest should go to Washington between December 1 and 12."

KANSAS CITY AND ST. LOUIS OPPONENTS OF THE BILL.

And now, citizens of Kansas, and, for that matter, of Oklahoma, all this is written to awaken you to the necessity of immediately petitioning the Senate to liberate you from the coils of the python which this "partnership" has fastened about you. And why?

You would think, citizens of Kansas and Oklahoma, that the Senate would be more than ready to give you this relief. It is your altars and firesides that are at stake. President-elect Woodrow Wilson, April 2, 1912, in vetoing a bill passed by the New Jersey Legislature, spoke concerning the attitude of the Federal Government on this question. He said: "It is a mistaken and hurtful Federal policy." The people of Kansas and Oklahoma know in bitterness it is a hurtful and a mistaken policy.

Beyond doubt this Federal protection of the intershipment of prohibited intoxicating liquors would be dissolved were it not for the pressure of the liquor trade which is fattening on this defiance of the State laws and for the added strength of those who for some reason are petitioning the Senate not to lift the Federal shelter from those thus nullifying the State laws.

WHY THOSE SIGNATURES?

The CONGRESSIONAL RECORD for December 16 contains the information of petitions remonstrating against the passage of the Kenyon-Sheppard bill 4043, which strips the liquor trade of its Federal protection in defying the laws of prohibition States. Among the petitioners were Local Union No. 43, Beer Drivers and Stablemen, International Union of United Brewery Workmen of America; Local Unions Nos. 237, 246, and 279, International Union of United Brewery Workmen of America, all of St. Louis; the Trade Assembly of Joplin, all in the State of Missouri; and the National German-American Alliance of Missouri, remonstrating against the passage of the so-called Kenyon-Sheppard interstate liquor bill.

Also, sundry telegrams in the nature of memorials from Strandberg, McGreevy & Co., the Southwestern National Bank of Commerce, the Densmore Hotel Co., Edward J. McMahan, the Bauer Machine Works, the Commerce Trust Co., the Niles & Moser Cigar Co., the First National Bank, the Kumpfs Insurance Agency, the Hodes Planing Mill, the A. J. Shirk Roofing Co., the Kupper Hotel Co., Charles Campbell, the Central Brass Works Co., Rothenberg & Schloss, the C. C. Yost Pie Co., and the Ridley Machine Works Co., all of Kansas City, Mo., remonstrating against the passage of the so-called Kenyon-Sheppard interstate liquor bill.

What can not fail to impress the citizenship of the western and southwestern country is the presence among these signatures not only of the "beer drivers and stablemen" and brewery roustabouts but of the Southwestern National Bank of Commerce, the Commerce Trust, and the First National Bank, of Kansas City. In behalf of the citizens of Kansas and Oklahoma we must ask, Why?

One thing we believe, so long as Kansas stands the sight of an advertisement, document, bill, draft, check, or other matter relating to the signers of the above appeal against what the people of Kansas believe and know to be an absolutely essential safeguard of their altars and firesides will call up a definite recollection of the attitude of these parties toward this relief. And this we regret. Possibly they will also.

Mr. POMERENE. Mr. President, I can not vote for this bill for the following reasons:

First. It is clearly unconstitutional. This is not a question of the prohibition of the liquor traffic by Congress nor is it a question of regulation by Congress. The purpose is to have Congress delegate the power to the several general assemblies of the country to make such police regulations as to them may seem proper relative to the inspection and seizure of intoxicating liquors in interstate trade. Congress is given full power to regulate interstate commerce. None of it is reserved to the States. Congress only has such powers as are conferred upon it by the Constitution. In no respect is it authorized to transfer this responsibility or power to the general assemblies.

Second. Waiving the question of the constitutionality of the bill, it is unfair and unjust, because the validity of an interstate shipment may depend wholly upon the bad faith of the vendee or of somebody directly or indirectly connected with the transaction, and the property may be seized by the State authorities and confiscated before it reaches the consignee, though the consignor was acting in the best of faith.

Ours is a dual form of government. The powers of sovereignty have been divided. Part of them are retained by the State and part are delegated to the Federal Government. All powers not delegated to the Federal Government, and not prohibited to the States, remain with the States and with the people. And it must follow that all powers which are delegated to the Federal Government are not retained by the people, unless they are so reserved to be exercised concurrently.

"It does not admit of argument," says Chief Justice Fuller (In re Rahrer, 140 U. S., 560), "that Congress can neither delegate its own powers nor enlarge those of a State."

Section 8 of Article I of the Constitution gave to Congress the power—

To regulate commerce with foreign nations and among the several States and with the Indian tribes.

Nowhere is any part of this power retained by the States or the people.

The police power rests with the States. The power to regulate commerce among the States is vested in Congress. Any student of this subject recognizes the fact that there may be and often

is a twilight zone where it is difficult to say what acts of sovereignty relate to the commerce power and what to the police power. But wherever this difficulty arises the Constitution has not left it unsolved, because by Article VI it provides that—

This Constitution and the laws of the United States, which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land.

It necessarily follows if there is any conflict of jurisdiction between the commerce power of the Federal Government and the police power of the States the former must prevail.

Chief Justice Fuller, in In re Raher (140 U. S., 555), says:

The power of Congress to regulate commerce among the several States, when the subjects of that power are national in their nature, is also exclusive. The Constitution does not provide that interstate commerce shall be free, but by the grant of this exclusive power to regulate it it was left free, except as Congress might impose restraint. Therefore *it has been* determined that the failure of Congress to exercise this exclusive power in any case is an expression of its will that the subject shall be free from restrictions or impositions upon it by the several States. (Robbins *v.* Shelby Taxing Dist., 120 U. S., 489.) And if a law passed by a State in the exercise of its acknowledged powers comes into conflict with that will, the Congress and the State can not occupy the position of equal opposing sovereignties, because the Constitution declares its supremacy and that of the laws passed in pursuance thereof. (Gibbons *v.* Ogden, 9 Wheat., 1, 210.) That which is not supreme must yield to that which is supreme. (Brown *v.* Maryland, 12 Wheat., 419, 448.)

What is it proposed to do by the Kenyon bill, so called? Section 1, as reported by the committee, reads:

That the *shipment or transportation* in any manner or by any means whatsoever of any *spirituous, vinous,* malted, fermented, or other intoxicating liquor of any kind, including beer, ale, or wine, *from* one State, Territory, or District of the United States or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, which said *spirituous, vinous, malted, fermented, or other intoxicating liquor is intended, by any person interested therein directly or indirectly, or in any manner connected with the transaction, to be received, possessed, or kept, or in any manner used, either in the original package or otherwise,* in violation of any law of such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, enacted in the exercise of the police powers of such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, *is hereby prohibited.*

Section 2 reads:

That all *fermented, distilled, or other intoxicating liquors or liquids transported into any State* or Territory, *or remaining therein for use, consumption, sale, or storage therein,* shall, upon arrival within the boundaries of such State or Territory and before delivery to the consignee, be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its reserved police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

Stripped of its legal verbiage this bill in section 1 declares that the shipment or transportation in any manner or by any means of any intoxicating liquor from one State to another, which intoxicating liquor is "intended by any person interested therein, directly or indirectly, or in any manner connected with the transaction, to be received, possessed, or kept, or in any manner used, either in the original package or otherwise, to be in violation of the law of such State," is prohibited.

And section 2 provides that all such intoxicating liquor, when transported into any State or remaining therein for use, consumption, sale, or storage therein, upon arrival within the boundaries of such State, *and before delivery to the consignee,* shall be subject to the operation and effect of the laws of such State enacted in the exercise of its reserved police powers to the extent and in the same manner as though such liquor had been produced in such State.

A careful analysis of this bill shows:

First. That if any person, whether he be seller or purchaser or transportation company or any person directly or indirectly interested therein, or in any manner connected with the transaction, intends to receive or possess or keep or in any manner use said liquor in violation of law, then the transportation is prohibited. In other words, if the vendor in one State should sell intoxicating liquor in good faith to a vendee in dry territory in another State under the representations by the vendee that it was to be used for medicinal, chemical, pharmaceutical, or sacramental purposes, or if the common carrier in good faith transported the liquor to be used for such purposes, and, in fact, the vendee did not intend to use it for any of those purposes, but intended to use it in violation of the law of the State or of the county or of the township or of the municipality or of the residential district in which the consignee lived, the property could be seized by the officers of the State immediately upon its crossing the border line of the State and before it reached the consignee and could be confiscated, if the State by its law would so declare.

Second. It is also apparent that if the vendor living in one State should contract to sell and transport liquor to a vendee in another State for lawful use, consumption, sale, or storage, and the contract should seemingly be made in the best of good faith by both parties thereto, and the liquor was afterwards shipped, the vendee could refuse to pay for it, because he could say, "I did not at the time of the purchase intend to use, consume, sell, or store this liquor legally, but I intended to use it in violation of law."

Third. An examination of this bill further discloses, if it becomes a law, that Congress does not have any fixed policy with respect to either the transportation, the use, consumption, sale, or storage of liquors. It is an attempt to relieve the Federal Government from all responsibility. It is an effort to delegate or, if not to delegate, to abdicate the power which the people gave to the Federal Government over interstate commerce and leave it subject to the will of the several States and localities therein.

Fourth. In the State of Ohio we have county local option, township local option, municipal local option, residential district local option, and municipalities are clothed with authority to prohibit by ordinance the sale of liquor within their limits.

Elections can be had on this subject every three years in counties and every two years in townships and municipalities, and petitions may be presented and hearings may be had to determine the question every two years in residential districts.

There are 1,379 townships in the State of Ohio. Under the Kenyon bill, if enacted, the shipment of liquor from another State to any of these counties, townships, municipalities, or residential districts would be legal or illegal as they were wet or dry, and subject to change every three years in the counties and every two years in the other political divisions. Purchasers might live in dry territory and do business in wet territory and have their point of shipment either in wet or dry territory. The liquor which is ordered by the purchaser may be for legal use in the township where he does business or for illegal use in the township in which he lives.

Under the Kenyon bill, if an illegal use, or consumption, or sale, or storage, or transportation is intended by anyone directly or indirectly connected with the transaction, the liquor is subject to search and seizure and even confiscation at the State line. A train which is carrying passengers and merchandise may be stopped, if the State legislature should authorize, at the Pennsylvania line, in order to search for liquor intended for an illegal purpose by some consignee living near the Indiana border. And it is worthy of thought to consider just how an official is to determine whether this liquor is intended to be used legally or illegally.

Whether this legislation is right or wrong, whether it is politic or impolitic, I am not now going to consider further. I call attention to these facts especially in order to determine what the effect is going to be upon interstate commerce. Clearly, if this bill is constitutional, it would confer upon the several States the power to do the things which I have just described. And if the State did any of these things, would it not be placing a burden upon interstate commerce? Would it not directly hamper and interfere with the transportation of passengers and of all classes of commodities as well as of liquor when on an interstate train? Would it not embarrass traffic to have this train stopped at the Pennsylvania line in order to search for some liquor which it was thought was intended for illegal use in Cincinnati, Dayton, Columbus, or Toledo? Would it not interfere with the right of contract by the citizens of one State with citizens of another? Surely these acts would be burdensome to interstate traffic. In other words, such legislation would be a direct interference with the regulation of interstate commerce.

I think, therefore, that it is clear:

First. That the power to regulate interstate commerce was surrendered by the States and vested in Congress;

Secondly. That if it is vested in Congress, it does not remain with the States; and

Thirdly. That if Congress has the power to permit the States to make any such regulations as I have referred to, it must be found in the Constitution.

Congress has no power of legislation save that which the Constitution gives it. Where, in the Constitution, is the authority given to the Congress whereby it can redeed—if I may use the term—this power back to the States from whence it came? Clearly it is not expressly given. In what clause of the Constitution is it impliedly given? This bill does not say "Congress is hereby regulating." It does say, in effect, "We grant permission to the States and to the several localities in those States to control interstate commerce, and they are to say whether interstate transportation is lawful or unlawful." In

other words, 48 States may have 48 different policies respecting interstate shipments of liquor, and in each political subdivision of the State the manufacture or sale or use of liquor may be legal or illegal, depending upon the choice of each and upon the authority given to each by the general assemblies in the States in which it may be located.

Each locality ought to have the right to determine this matter for itself so far as it can consistent with constitutional authority.

I do not believe, sir, that it was ever the intention of the fathers, when the Federal Constitution was adopted, that this power over interstate commerce was to be shifted from State to Nation, and then from Nation back to State. If it was so intended, somewhere within the limits of the Constitution there would be some hint that such was the purpose.

The fact that this bill is presented is a concession that the States do not have the power to control the shipment from another State of intoxicating liquors or to search an interstate agency and seize the liquor prior to the delivery to the consignee.

It must therefore remain in Congress. If Congress can delegate this power to the States, it must be because Congress possesses that power under some provision of the Constitution. As the power to regulate commerce is clearly given to Congress, how can it be given back to the States? Where is the provision in the Constitution authorizing Congress to delegate this power back to the States, either by direction or by indirection? If there is no such power anywhere contained in the Constitution, then it seems to me that it is clear there is no authority under which this bill can be legally passed.

A transportation line leading from one State into another is an agency for interstate commerce. As an agency of interstate commerce, it is within the power of Congress to control it, and, being within the power of Congress to control it, though a portion of the line is within a State, it is, so far as the power of regulation is concerned, as much foreign to the State as is the territory beyond the boundaries of the State. The State can not regulate commerce which is beyond its boundaries, and neither, in my judgment, can it control or regulate the commerce which is conducted by an agency within the State so long as it is an interstate agency.

It is suggested with much plausibility that if the legislature can forbid or control the sale of liquor within the State, and can not control or regulate the sale of liquor therein by a man without the State, it is giving the man outside the State greater privileges than has the man within the State. This may be so, but, if so, it addresses itself only as to the question of what the law ought to be and not as to the question of what it is or can be made constitutionally.

Let us take the other horn of the dilemma. Assume for the sake of argument that the legislature has the power to forbid the sale and delivery by some one outside of the State to some one within the State, then we are conferring upon the legislature of a State the power to control the interstate commerce by a man without the State. In other words, the legislative power of the State is extending beyond the State and over a man who is not subject to its jurisdiction. From the standpoint of a citizen within the State present conditions may seem unfair, but no more unfair than is the legislation of the proposed character to the citizen of another State in the second instance just cited. All of this argument shows the wisdom of the fathers in leaving interstate commerce to the jurisdiction and control of Congress. And if we are not content with present conditions, we must change the form of our Government by amending the Federal Constitution. There is no escape from it.

In United States *v.* E. C. Knight Co. (156 U. S., 1, 13) the Supreme Court says:

> It is vital that the independence of the commercial power and of the police power, and the delimitation between them, however sometimes perplexing, should always be recognized and observed, for while the one furnishes the strongest bond of union, the other is essential to the preservation of the autonomy of the States as required by our dual form of government; and acknowledged evils, however grave and urgent they may appear to be, had better be borne than the risk be run in the effort to suppress them of more serious consequences by resort to expedients of even doubtful constitutionality.

ADJUDICATIONS.

Let us now turn to some of the adjudications bearing upon the subject of interstate commerce in liquors to ascertain what light, if any, we can find upon the subject of the pending bill touching the power of the Congress and of the States.

In Bowman *v.* Chicago & North Western Railway Co. (125 U. S., 46) the question was the effect of a statute of the State of Iowa on the interstate shipment of liquors which forbade common carriers bringing into that State from any other State intoxicating liquors without first being furnished with a certificate of the auditor of the county to which it was to be transferred to the effect that the consignee was authorized to sell intoxicating liquors in that county. The defendant was sued as a common carrier in the State of Illinois for breach of duty in refusing to transport from Illinois to Iowa a shipment of liquor. The railroad interposed as a defense the Iowa State law. The court said (p. 486):

> Has the law of Iowa any extra-territorial force which does not belong to the law of the State of Illinois? If the law of Iowa forbids the delivery and the law of Illinois requires the transportaion, which of the two shall prevail? How can the former make void the latter?

On page 485 the court quotes from Twelfth Howard, page 299, the following:

> The subjects, indeed, upon which Congress can act under this power are of infinite variety, requiring for their successful management different plans or modes of treatment. Some of them are national in their character and admit and require uniformity of regulation affecting alike all the States. Others are local or are mere aids to commence and can only be properly regulated by provisions adapted to their special circumstances and localities. *Of the former class may be mentioned all that portion of commerce with foreign countries or between the States which consists in the transportation, purchase, sale, and exchange of commodities.* Here there can of necessity be only one system or plan of regulations, and that Congress alone can prescribe. Its nonaction in such cases with respect to any particular commodity or mode of transportation is a declaration of its purpose that the commodity or by that means of transportation shall be free. *There would otherwise be no security against conflicting regulations of different States, each discriminating in favor of its own products and against the products of citizens of other States.* And it is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign nations and among the States was to insure uniformity of regulation against conflicting and discriminating State legislation.

Again, on page 489, in the Bowman case, the court quotes approvingly from Hall *v.* De Cuir (95 U. S., 488):

> But we think it may safely be said that State legislation which seeks to impose a direct burden upon interstate commerce or to interfere directly with its freedom does encroach upon the exclusive power of Congress.

The court concluded:

> That the statute of Iowa, the validity of which is drawn in question in this case, does not fall within this enumeration of legitimate exercise of the police power. It is not an exercise of the jurisdiction of the State over persons and property within its limits. On the contrary, it is an attempt to exert that jurisdiction over persons and property within the limits of other States. It seeks to prohibit and stop their passage and importation into its own limits and is designated as a regulation for the conduct of commerce before the merchandise is brought to its border. * * * It is therefore a regulation of that character which constitutes an unauthorized interference with the power given to Congress over the subject.

In Leisy *v.* Hardin (135 U. S., 100) the court held:

> A statute of the State of Iowa prohibiting the sale of any intoxicating liquors, except for pharmaceutical, medicinal, chemical, or sacramental purposes and under a license from a county court of the State, is, as applied to a sale by the importer and in the original packages or kegs, unbroken and unopened, of such liquors manufactured in and brought from another State, unconstitutional and void as repugnant to the clause of the Constitution granting to Congress the power to regulate commerce with foreign nations and among the several States.

This rule was later modified by the Wilson Act.

Chief Justice Fuller (p. 108), in the case just referred to, says:

> The power vested in Congress "to regulate commerce with foreign nations and among the several States and with the Indian tribes" is the power to prescribe the rule by which that commerce is to be governed and is a power complete in itself, acknowledging no limitations other than those prescribed in the Constitution. It is coextensive with the subject on which it acts and can not be stopped at the external boundary of a State, but must enter its interior and must be capable of authorizing the disposition of those articles which it introduces, so that they may become mingled with the common mass of property within the territory entered. (Gibbons *v.* Ogden, 9 Wheat., 1; Brown *v.* Maryland, 12 Wheat., 419.)

On August 8, 1890, Congress passed the Wilson Act. It provided:

> That all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale, or storage therein, shall, *upon arrival in such State or Territory*, be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers to the same extent and in the same manner as though such liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

This statute came up for consideration in In re Rahrer (140 U. S., 545), and was sustained by the court. The question involved therein was as to whether liquors in the original packages could be sold in the State of Kansas under a law of the State forbidding its manufacture or sale. It will be noted that the only question before the court was the validity of a sale within the State. It did not involve the validity of the act of interstate transportation.

In Rhodes *v.* Iowa (170 U. S., 412) the Wilson Act again came before the Supreme Court. The Iowa statute forbade any common carrier or person transporting from one place to another in the State any intoxicating liquors without first being furnished with a certificate from the county auditor to the effect that the consignee was authorized to sell intoxicating

liquors in that county. The question in the case was, Does the Iowa statute apply to a shipment made in Illinois for delivery to the consignee in Iowa?

The liquor was seized by the constable shortly after it was removed from the train to the freight house, and was condemned and there destroyed. It had been held in the Bowman case that the transportation of merchandise from one State into and across another was interstate commerce, and was protected from the operation of the State laws from the moment of shipment whilst in transit and up to the ending of the journey by the delivery of the goods to the consignee at the place to which they were consigned.

And in the Rhodes case (170 U. S., 412), to which I shall hereafter refer, Mr. Justice White, in discussing the Bowman case, said:

> The fundamental right which the decision in the Bowman case held to be protected from the operation of State laws by the Constitution of the *United States* was the continuity of shipment of goods coming from one State into another from the point of transmission to the point of consignment, and the accomplishment there of the delivery covered by the contract. This protection of the Constitution of the United States is plainly denied by the statute now under review, as its provisions are interpreted by the court below. The power which it was held in the Bowman case the State did not possess was that of stopping interstate shipments at the State line by breaking their continuity and intercepting their course from the point of origin to the point of consummation.

In Rhodes *v.* Iowa (170 U. S., 412) it was contended that the words in the Wilson Act "upon arrival in such State" meant "arrival at the State line." The court held that this meant *at the place of consignment in the State.*

The language of the learned justice shows how careful the court was to protect the power of the Federal Government over interstate commerce.

On page 421 the court says:

> But to uphold the meaning of the word "arrival," which is necessary to support the State law as construed below, forces the conclusion that the act of Congress in question authorized State laws to forbid the bringing into the State at all. This follows from the fact that if arrival means crossing the line, then the act of crossing into the State would be a violation of the State law, and hence necessarily the operation of the law is to forbid crossing the line and to compel remaining beyond the same. Thus, if the construction of the word "arrival" be that which is claimed for it, it must be held that the State statute attached and operated beyond the State line confessedly before the time when it was intended by the act of Congress it should take effect.

And if it was true in the case of the Iowa statute that the construction contended for by the State authorities would have the effect of extending its operation beyond the State, certainly the Kenyon bill would have a like effect and would operate upon the interstate commerce beyond the State line.

In the earlier adjudications upon this subject the Supreme Court took the extreme view of holding that goods in transit from a foreign country to a State of the Union or from one State or Territory to another continue to be interstate commerce and under the control of Congress after they were delivered to the consignee and so long as they remained in the original package. I believe that this was an extreme position to take, because the original package in which the goods were shipped was a mere incident of commerce, and after it was delivered to the consignee it became thereby commingled with the goods and property of the State and ought to be subject to the control of the State, for this reason if for no other, that the consignee is a resident of the State and is not primarily an interstate agency. His act in selling to a fellow citizen of the State is a State and not an interstate transaction. The railroad or other transportation company which extends its lines and its business from one State into another is essentially and primarily an agency of interstate commerce. If we are to permit the interstate transportation companies to be subject to the legislation of the several States through which they may pass, we will at once destroy commerce among the States and defeat the very purpose for which the third paragraph of section 8 of Article I of the Federal Constitution was adopted. If the police power of the States can adopt the regulations provided for in the pending bill while spirits are recognized as articles of interstate commerce, they can apply these same or similar regulations to any other article of commerce, and the effect would be to make the State the supreme law of the land instead of the Federal Constitution, with the laws and treaties made in pursuance thereof, as declared by the Constitution itself.

If I may be pardoned for so saying, I never had much sympathy with the doctrine laid down in the earlier cases that merchandise retained its interstate character so long as it remained in the "original packages." It seems to me that the interstate character of a shipment from one State to another continued only up to the time of delivery to the consignee, at which time the contract between the consignor and consignee is complete, and to say that it continued so long as the merchandise remained in the original package, even though it came into the hands of other parties by purchase, is carrying the doctrine too far. But, however that may be, the Supreme Court has repeatedly said that the original package was only an incident of interstate commerce.

I speak of this because the Wilson Act is sometimes referred to as a precedent for the Kenyon bill. Instead of its being a precedent for the Kenyon bill it seems to me that a careful consideration of the decisions based upon the act make it a precedent against the constitutionality of this bill, because of the narrow construction which was given to the phraseology of the Wilson Act by the court in the Rhodes case limiting the meaning of the words "upon arrival" as heretofore pointed out.

Can it now be said that because Congress sought to change the original-package rule, that this is a precedent for giving to the State the entire police regulation of all interstate business, or, to limit it to this particular class of goods, to the transportation of liquors by interstate agencies immediately upon their arrival across the boundary line of the State? Is the control of an incident of interstate business to be a precedent for the control of the very essence of the business?

That we must not so conclude clearly appears from what Mr. Justice White says in the Rhodes case, on page 422:

> If the act of Congress be construed as reaching the contract for interstate shipment made in another State, the necessary effect must be to give to the laws of the several States extraterritorial operation, for, as held in the Bowman case, the inevitable consequence of allowing a State law to forbid interstate shipments of merchandise would be to destroy the right to contract beyond the limits of the State for such shipments. If the construction claimed be upheld, it would be in the power of each State to compel every interstate-commerce train to stop before crossing its borders and discharge its freight, lest by crossing the line it might carry within the State merchandise of the character named covered by the inhibitions of a State statute.

In further discussing this branch of the subject the learned justice, on page 424, says:

> The purpose of Congress to submit the incidental power to sell to the dominion of State authority should not without the clearest implication be held to imply the purpose of subjecting to State laws a contract which in its very object and nature was not susceptible of such regulation even if the constitutional right to do so existed, as to which no opinion is expressed.

In Vance *v.* W. A. Vandercook Co. (170 U. S., 438) the court was considering the validity of an act of the State of South Carolina and its effect upon interstate commerce. In the discussion of that case Mr. Justice White, on page 444, says:

> In the inception it is necessary to bear in mind a few elementary propositions which are so entirely concluded by the previous adjudications of this court that they need only be briefly recapitulated:
>
> (a) Beyond dispute the respective States have plenary power to regulate the sale of intoxicating liquors within their borders, and the scope and extent of such regulations depend solely on the judgment of the lawmaking power of the States, provided always they do not transcend the limits of State authority by invading rights which are secured by the Constitution of the United States, and provided further that the regulations as adopted do not operate a discrimination against the rights of residents or citizens of other States of the Union.
>
> (b) Equally well established is the proposition that the right to send liquors from one State into another, and the act of sending the same, is interstate commerce, the regulation whereof has been committed by the Constitution of the United States to Congress, and hence that a State law which denies such a right, or substantially interferes with or hampers the same, is in conflict with the Constitution of the United States.

On page 452 Mr. Justice White says:

> But the right of persons in one State to ship liquor into another State to a resident for his own use is derived from the Constitution of the United States and does not rest on the grant of the State law. Either the conditions attached by the State law unlawfully restrain the right or they do not. If they do—and we shall hereafter examine this contention—then they are void. If they do not, then there is no lawful ground of complaint on the subject.

I will not stop now to read the South Carolina statute. After quoting it, Mr. Justice White says—page 455:

> The regulation, then, compels the resident of the State who desires to order for his own use to first communicate his purpose to a State chemist. It moreover deprives any nonresident of the right to ship by means of interstate commerce any liquor into South Carolina unless previous authority is obtained from the officers of the State of South Carolina. On the face of these regulations it is clear that they subject the constitutional right of the nonresident to ship into the State and of the resident in the State to receive for his own use to conditions which are wholly incompatible with and repugnant to the existence of the right which the statute itself asknowledges. The right of the citizen of another State to avail himself of interstate commerce can not be held to be subject to the issuing of a certificate by an officer of the State of South Carolina without admitting the power of that officer to control the exercise of the right. But the right arises from the Constitution of the United States; it exists wholly independent of the will of either the lawmaking or the executive power of the State; it takes its origin outside of the State of South Carolina and finds its support in the Constitution of the United States. Whether or not it may be exercised depends solely upon the will of the person making the shipment and can not be in advance controlled or limited by the action of the State in any department of its government.

I shall only take the time of the Senate to cite one further decision of the United States Supreme Court bearing upon this

branch of the question. It is the case of the Louisville & Nashville Railway against Cook Brewing Co. (223 U. S., 70).

The Legislature of the State of Kentucky, on March 21, 1906, passed an act by which it was made "unlawful for any common carrier to transport beer or any intoxicating liquor to any consignee in any locality within the State where the sale of said liquors has been prohibited by vote of the people under the local-option law."

The Louisville & Nashville Railway Co. took the position that this applied to interstate as well as to intrastate transportation, and refused to receive for shipment beer consigned by the Cook Brewing Co., at Evansville, Ind., to points in Kentucky where the local-option law was in force.

The Kentucky statute was sustained by the court so far as it related to intrastate shipments, but was held ineffective as to interstate shipments.

On page 82 Mr. Justice Lurton, delivering the unanimous opinion of the court, says:

By a long line of decisions beginning even prior to Leisy *v.* Hardin (135 U. S., 100) it has been indisputably determined:

(a) That beer and other intoxicating liquors are a recognized and legitimate subject of interstate commerce.

(b) That it is not competent for any State to forbid any common carrier to transport such articles from a consignor in one State to a consignee in another.

(c) That until such transportation is concluded by delivery to the consignee such commodities do not become subject to State regulation, restraining their sale or disposition.

The Wilson Act, which subjects such liquors to State regulation, although still in the original packages, does not apply before actual delivery to such consignee where the shipment is interstate. Some of the many later cases in which these matters have been so determined and the Wilson Act construed are Rhodes *v.* Iowa (170 U. S., 412); Vance *v.* Vandercook Co. (170 U. S., 438); Heyman *v.* Southern Railway (203 U. S., 270); Adams Express Co. *v.* Kentucky (214 U. S., 218).

If, then, intoxicating liquors are a recognized and legitimate subject of interstate commerce, if it is not competent for any State to forbid a common carrier to transport such articles from a consignor in one State to a consignee in another, if such commodities do not become subject to State regulation until the act of transportation is concluded, as held by Mr. Justice Lurton in the decision just referred to as well as in the other cases I have cited, and if, as Mr. Chief Justice Fuller said in In re Rahrer, it does not admit of argument that Congress can not redelegate its own powers to the State, nor enlarge those of the State, how can the friends of the Kenyon bill hope to have its constitutionality sustained when the very purpose of the bill is to declare unlawful the shipment or the transportation of intoxicating liquors from one State into any locality in another State where they are to be received, possessed, or kept, or in any manner used in violation of the law of such State by anyone directly or indirectly interested therein, or in any manner connected with the transaction?

I recognize the fact that the liquor regulations are not enforced as they ought to be. It is not right that sales should be made in localities which have voted dry. Constant defiance of the law by many of those engaged in the traffic have rightly aroused public sentiment. The remedy, however, is not to be found in more legislation, but in more vigorous enforcement of present legislation. Every locality has its police authorities clothed with ample power. If they are supported by public sentiment and perform their duties, there will be no cause for complaint. If they are not supported by public sentiment or they do not perform their duties, the remedy for existing wrongs is not additional Federal legislation, unconstitutional in character, but the creation of a proper public sentiment and the securing of officers who will perform their duties.

Congress some years ago gave, and properly gave, aid to the States in the administration of their police authority when sections 238, 239, and 240 of the Criminal Code of the United States were enacted.

Section 238 prevents any common carrier or employee from knowingly delivering or causing to be delivered to any person other than the consignee, except upon written order, any interstate shipment of liquor.

Section 239 prevents the common carrier from collecting the purchase price of interstate shipments of intoxicating liquors or to act as the agent of the buyer or seller of the liquor for the purpose of buying or selling or completing the sale thereof save only in the actual transportation and delivery of the same.

Section 240 requires that all packages shall be labeled on the outside cover so as to plainly show the name of the consignee, the nature of their contents, and the quantity thereof.

By this means the local police authorities can easily ascertain whether liquor is being delivered in their localities and to whom. In every hamlet and township the means of detection are at hand without attempting, by the pending legislation, to embarrass and burden the great avenues and agencies of commerce.

If the Kenyon bill is the sine qua non for law and order, it must be first authorized by an amendment to the interstate-commerce clause of the Federal Constitution. All localities have at their very doors the same opportunities for search and seizure and confiscation after the delivery to the consignee that they could have at the gateways of commerce on the border lines of the State. If, in the opinion of the friends of this measure, the fathers made a mistake by conferring upon the Federal Government the power to regulate commerce between the States there is a lawful way to correct it, and that is by an amendment to the Constitution in the manner therein provided.

Mr. SUTHERLAND. Mr. President——

Mr. POMERENE. Will the Senator from Utah yield to me?

Mr. SUTHERLAND. I yield to the Senator from Ohio.

Mr. POMERENE. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. JOHNSON of Maine in the chair). The Senator from Ohio suggests the absence of a quorum. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Culberson	Lea	Sheppard
Bacon	Cummins	Lodge	Simmons
Borah	Curtis	McCumber	Smith, Ariz.
Bourne	Dillingham	Martin, Va.	Smith, Mich.
Bradley	Dixon	Martine, N. J.	Smith, S. C.
Brandegee	du Pont	Nelson	Smoot
Bristow	Foster	Newlands	Stephenson
Brown	Gallinger	O'Gorman	Stone
Bryan	Gamble	Oliver	Sutherland
Burnham	Gronna	Overman	Thomas
Burton	Hitchcock	Page	Thornton
Chamberlain	Jackson	Paynter	Townsend
Clapp	Johnson, Me.	Percy	Webb
Clark, Wyo.	Johnston, Ala.	Perkins	Williams
Clarke, Ark.	Jones	Pomerene	
Crane	Kavanaugh	Richardson	
Crawford	Kenyon	Root	

Mr. OLIVER. I wish to state that my colleague [Mr. PENROSE] is absent on account of illness. I will allow this announcement to stand for the day.

The PRESIDING OFFICER. Sixty-five Senators have answered to their names. A quorum of the Senate is present. The Senator from Utah will proceed.

Mr. SUTHERLAND. Mr. President, it is no part of my purpose to enter upon a discussion of the merits of this proposed legislation. In what I shall have to say I shall confine myself to the question of its legality.

I sympathize, I think, quite as much as the proponents of this measure with all practicable efforts which have for their object the curtailment or the prevention of the evils which we all concede follow from the use of intoxicating liquors. If I had the power to do so by my single pronouncement I would consign every drop of intoxicating liquor to the bottom of the ocean, because I believe that humanity would be far better off without it.

But, Mr. President, it is necessary not only that a proposed piece of legislation should be wise and just, but under our form of government it is necessary that it should be in harmony with the Constitution of the United States.

The bill which is now under consideration consists of two sections. By the first it is provided, in substance, that the shipment or transportation of intoxicating liquor from one State into any other, or from any foreign country into any State, which liquor is intended by any person interested therein, directly or indirectly, or in any manner connected with the transaction, to be received, possessed, or kept, or in any manner used, in violation of any law of such State, is prohibited.

The second section provides that any such intoxicating liquor transported into any State, or remaining therein for use, consumption, sale, or storage shall, upon arrival within the boundaries of such State, and before delivery to the consignee, be subject to the operation and effect of the laws of such State enacted in the exercise of its reserved police powers, to the same extent and in the same manner as though such liquor had been produced in such State.

The purpose sought to be accomplished by each of these sections is precisely the same, namely, to allow the State jurisdiction over intoxicating liquors to attach upon the instant that such liquors, being carried in interstate transportation, cross the boundary line of the State to which they are consigned. It seems to be conceded, as indeed it must be conceded, that in the absence of the proposed congressional legislation any interference upon the part of a State, by statute or otherwise, with an interstate shipment of intoxicating liquor prior to its delivery would be void as constituting a regulation of interstate commerce, a subject committed by the Constitution to the sole jurisdiction of Congress. The proposed bill therefore consti-

tutes an attempt upon the part of Congress to enable a State to deal with intoxicating liquors in a manner which and at a time when it would be utterly precluded from doing in the absence of any such legislation. Is not its effect, then, clearly to confer upon a State a power which it does not now possess? In the course of what I shall have to say I shall endeavor to establish the following propositions:

I. The purpose in giving to Congress the power to regulate interstate commerce was to secure commerce among the States against conflicting and discriminating State regulations and to insure a free interchange of all legitimate articles of interstate commerce among the citizens of the several States.

II. Intoxicating liquor is a legitimate article of commerce, and so long as it is recognized as such it can not be denied the right of interstate transportation.

III. Regulation may take the form of prohibition only where the article in question has been outlawed, not by a few of the States, but substantially by the people of the Nation.

IV. In this respect the power of Congress over interstate commerce is not as extensive as it is over foreign commerce. In the latter case the Nation deals in its sovereign capacity and may prohibit importation from foreign countries altogether. And I may add it may prohibit importation from foreign countries altogether of any and every article. In dealing with the several States it can not altogether forbid the interchange of legitimate commodities.

V. Congress can not add to or take from the powers of a State. It can not by its silence or by any affirmative or permissive act enable a State to do anything which by the Constitution it is inhibited from doing.

VI. The State can not by statute, or otherwise, substantially interfere with interstate transportation, because such interference would be a regulation of interstate commerce. This is so, not because such action on the part of the State is opposed to the will of Congress, or to any act of Congress, but because it is opposed to the Constitution. Being opposed to the Constitution, it is self-evident that Congress can not by any form of legislation authorize the State to do what the Constitution forbids it from doing.

VII. The bill in question, if upheld, would necessarily result in a multitude of differing and conflicting systems of regulation, and this would subvert the whole intent, spirit, and purpose of the commerce clause, which is essentially to establish a uniform system and consequently forbid the establishment of a multitude of differing systems.

Mr. President, before I begin the discussion of the various propositions which I have laid down, I desire to call attention to some of the legislation which is now upon the statute books.

The legislation which has special reference to this subject now in force is, first, the so-called Wilson law. Under the provisions of that law, which was enacted in 1890, it is provided that intoxicating liquors shall, upon arrival in a State, become subject to the State laws enacted in the exercise of the police power.

This law, although comprehensive in terms, has been so limited by the decisions of the Supreme Court that it applies only to interstate shipments of liquor after they have been delivered to the consignee; that is, it permits the State, after the liquor has been delivered to the consignee, and therefore after the interstate transportation has ended, to be governed by the State law.

Second. Sections 238, 239, and 240 of the Penal Code forbid under a penalty (1) delivery of intoxicating liquor to any person other than the consignee, unless upon his written order, or to any fictitious person; (2) the collection of the purchase price of intoxicating liquor by any common carrier or acting as agent of buyer or seller; (3) the shipment of any liquor unless labeled on the outside to show name of consignee, nature of contents, and quantity contained.

Under this legislation the State has full power to seize and confiscate liquor after it reaches the hands of the consignee, and the sections of the penal code, by requiring delivery to an actual consignee and the plain marking of every package with the name of consignee and the quantity and kind of liquor contained, furnishes information which will enable the State to act.

The proposed bill attempts to go entirely beyond this legislation. The first section of that bill, I repeat, provides in substance that shipment or transportation of intoxicating liquor from one State to another, or from any foreign country into any State, is prohibited if the same "is intended, by any person interested therein, directly or indirectly, or in any manner connected with the transaction, to be received, possessed, or kept, or in any manner used, * * * in violation of any law of the State enacted in the exercise of its police power."

Section 2 provides that all intoxicating liquor shall upon arrival within the boundaries of the State, and before delivery to the consignee—in express terms going beyond the Wilson law—be subject to the operation and effect of the police laws of the State to the same extent—mark you—and in the same manner as though such liquors had been produced in such State. In other words, that interstate commerce in this article shall be subject to the State laws just as intrastate commerce is subject to those laws.

Section 2 is an attempt on the part of Congress to allow any State to deal as it shall see fit with the interstate shipment of liquor immediately after it crosses the boundary line of the State. It therefore gives to the State the power to regulate and control an interstate shipment of liquor before the interstate transportation has ended, and constitutes, therefore, a clear delegation of the power of Congress to regulate interstate commerce.

Section 1 seeks to do precisely the same thing by legislation so worded as to obscure its real intent; in other words, section 2 does directly what section 1 does indirectly. In both cases Congress itself does not undertake to prescribe the rule which shall govern the interstate transaction, but leaves it to be prescribed wholly by the State.

Now, not only does this proposed legislation seek to turn over to the States the power to thus regulate *interstate* commerce, but it gives identically the same power to each State to regulate *foreign* commerce. We have by our laws in the plainest terms invited foreign nations to make shipments of all kinds of intoxicating liquors to us upon complying with our laws with reference to the payment of duties, so that the foreigner in Paris or in any other part of Europe, looking at the Federal law, finds that he may ship to the United States and to any and every part of it wines or liquors of any description upon complying with those conditions. We now propose by this legislation to inject into the whole system an element which can but result in the utmost confusion. The merchant in Paris then must inquire, not only what is the law of the United States, but he must inquire what is the law of Kansas, what is the law of Iowa, and of the others of the 48 States. Even then his inquiry is not ended. He will find that in some States the sale of liquor has been altogether prohibited; in other States he will find that it has been left to various communities to determine the question. So he must inquire further. If his shipment is destined for county A in Indiana, he must ascertain whether a vote of the people has been recently taken and, as a result of the vote, whether the sale of liquor in that county has been forbidden. He may ascertain one thing or the other. Indeed, he may begin the shipment of his consignment of liquor to county A, relying upon the vote of the people in favor of the regulated saloon, and find, before his shipment has reached New York, that the people have reversed themselves and have voted in favor of excluding the regulated saloon and of absolute prohibition.

If the foreigner sends a shipment of liquor to Kansas, it may be held in the office of the collector in Topeka, and the State at that period—because the bill proposes no limitation upon the power of the State—may seize the consignment. It seems to me, without elaborating further upon the question, that this proposed legislation must of necessity, so far as it affects foreign commerce, result in indescribable confusion in the administration of our tariff laws.

It is conceded that Congress may not delegate to any State its authority over any subject committed to it by the Constitution. The people in framing the Government selected Congress as one of its agents, and empowered that agent among other things to regulate interstate and foreign commerce. The effect of conferring this power upon Congress was to deny it to the several States. The rule is fundamental that an agent can not delegate his authority. The question therefore arises whether the proposed legislation attempts this delegation. If it does, it is absolutely void. A correct solution of this question involves an inquiry into the extent and character of the commerce power as embodied in the commerce clause of the Constitution.

Let me say, before I come to that, that section 1 of this proposed legislation is absolutely unique. So far as my investigation goes it has not a parallel anywhere in the civilized world. What are the consequences to follow the violation of section 1? An act of legislation which the citizen is at perfect liberty to violate, or the violation of which produces no consequences whatever, may be wise and friendly counsel, but it certainly is not law, for law presumes a rule of conduct which the citizen must obey or suffer the consequences. So far as the Government of the United States is concerned, no penalty whatever is prescribed for its violation. Every consequence which will follow a violation will be imposed by a State law. How can Congress pass a law leaving each State to prescribe the effect which shall follow its disobedience? Moreover, we do not even author-

ize the State by statute to regulate finally; but, in the last analysis, by this section we permit the undisclosed intent of some unnamed and undesignated individual to regulate interstate commerce.

I. WHAT WAS THE PURPOSE IN GIVING TO CONGRESS THE POWER TO REGULATE INTERSTATE COMMERCE?

To ascertain this will reflect light upon the meaning of the provision, since the grant of the power must be interpreted with a view to the accomplishment of the end sought. The controlling purpose was to secure commerce among the States against conflicting and discriminating State regulations.

In Mobile *v.* Kimball (102 U. S., 691, 697), the Supreme Court said:

It is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign nations and among the States was to insure uniformity of regulation against conflicting and discriminating State legislation.

In Western Union Telegraph Co. *v.* Pendleton (122 U. S., 347, 358), the court, after quoting preceding cases, said:

The supreme authority of Congress over the subject of commerce by the telegraph with foreign countries or among the States is affirmed, whenever that body chooses to exert its power; and it is also held that the States can impose no impediments to the freedom of that commerce.

And again, on the same page:

The object of vesting the power to regulate commerce in Congress was to secure, with reference to its subjects, uniform regulations, where such uniformity is practicable, against conflicting State legislation.

In Steamship Co. *v.* Port Wardens (6 Wall., 31, 33), the court said:

And it was thus given, so far as it relates to commerce between the States, with the obvious intent to place that commerce beyond interruption or embarrassment arising from the conflicting or hostile State regulations.

In Inman Steamship Co. *v.* Tinker (94 U. S., 238, 245), the court said:

The commerce clauses of the Constitution had their origin in a wise and salutory policy. They give to Congress the entire control of the foreign and interstate commerce of the country. They were intended to secure harmony and uniformity in the regulations by which they should be governed. Wherever such commerce goes the power of the Nation accompanies it, ready and competent, as far as possible, to promote its prosperity and redress the wrongs and evils to which it may be subjected.

In Leisy *v.* Hardin (135 U. S., 100, 112), the court said:

But the transportation of merchandise from one State to another is in its nature national, admitting of but one regulating power; and it was to guard against the possibility of commercial embarrassments which would result if one State could directly or indirectly tax persons or property passing through it, or prohibit particular property from entrance into the State, that the power of regulating commerce among the States was conferred upon the Federal Government.

In the case of Bowman *v.* Chicago & Northwestern Railway Co. (125 U. S., 465, 508), Mr. Justice Field said:

It is a matter of history that one of the great objects of the formation of the Constitution was to secure uniformity of commercial regulations and thus put an end to restrictive and hostile discriminations by one State against the products of other States and against their importation and sale.

"It may be doubted," says Chief Justice Marshall, "whether any of the evils proceeding from the feebleness of the Federal Government contributed more to that great revolution which introduced the present system than the deep and general conviction that commerce ought to be regulated by Congress. It is not, therefore, matter of surprise that the grant should be as extensive as the mischief, and should comprehend all foreign commerce and all commerce among the States. To construe the power so as to impair its efficacy would tend to defeat an object, in the attainment of which the American Government took, and justly took, that strong interest which arose from a full conviction of its necessity" (p. 508).

And on page 484 the court said, quoting from Railroad Company *v.* Richmond (19 Wall., 584):

The power to regulate commerce among the several States was vested in Congress in order to secure equality and freedom in commercial intercourse against discriminating State legislation.

And on page 481 the court said, quoting from another decision:

It is of national importance that over that subject there should be but one regulating power.

Mr. Justice Miller, in his lectures on the Constitution, says:

You would scarcely imagine, and I am sure you do not know unless you have given some consideration to the subject, how very important is that little sentence in the Constitution. It was the want of any power to regulate commerce as between the States themselves and with foreign nations which as much, and I am not sure but I am justified in saying more, than any one thing forced the States to form the present Constitution in lieu of the Articles of Confederation under which they had won their freedom and established their independence. It is difficult now for us to fully appreciate how strong was the tendency to separate, to quarrel, and to bring their adverse interests into collision, which grew out of the want of any general power in the Federal Government, as it then existed, to control the commercial relations of the States with each other (p. 433).

Hamilton said:

The competitions of commerce would be another fruitful source of contention. The States less favorably circumstanced would be desirous of escaping from the disadvantages of local situation and of sharing in the advantages of their more fortunate neighbors. Each State or separate confederacy would pursue a system of commercial polity peculiar to itself. This would occasion distinctions, preferences, and exclusions, which would beget discontent. The habits of intercourse, on the basis of equal privileges, to which we have been accustomed from the earliest settlement of the country, would give a keener edge to those causes of discontent than they would naturally have independent of this circumstance. * * * The opportunities which some States would have of rendering others tributary to them by commercial regulations would be impatiently submitted to by the tributary States.

And, quoting further from Hamilton:

The interfering and unneighborly regulations of some States, contrary to the true spirit of the Union, have in different instances given just cause of umbrage and complaint to others; and it is to be feared that examples of this nature, if not restrained by a national control, would be multiplied and extended till they became not less serious sources of animosity and discord than injurious impediments to the intercourse between the different parts of the Confederacy.

Mr. Justice Matthews, speaking for the court, said in Bowman *v.* C. & N. W. Ry. Co. (125 U. S., 465–493):

Can it be supposed that by omitting any express declarations on the subject Congress has intended to submit to the several States the decision of the question in each locality of what shall and what shall not be articles of traffic in the interstate commerce of the country? If so, it has left to each State, according to its own caprice and arbitrary will, to discriminate for or against every article grown, produced, manufactured, or sold in any State and sought to be introduced as an article of commerce into any other. If the State of Iowa may prohibit the importation of intoxicating liquors from all other States, it may also include tobacco or any other article the use or abuse of which it may deem deleterious. It may not choose even to be governed by considerations growing out of the health, comfort, or peace of the community. Its policy may be directed to other ends. It may choose to establish a system directed to the promotion and benefit of its own agriculture, manufactures, or arts of any description, and prevent the introduction and sale within its limits of any or of all articles that it may select as coming into competition with those which it seeks to protect. The police power of the State would extend to such cases as well as to those in which it was sought to legislate in behalf of the health, peace, and morals of the people. It view of the commercial anarchy and confusion that would result from the diverse exertions of power by the several States of the Union, it can not be supposed that the Constitution or Congress have intended to limit the freedom of commercial intercourse among the people of the several States. "It can not be too strongly insisted upon," said this court in Wabash, etc., Ry. Co. *v.* Illinois (118 U. S., 557–572), "that the right of continuous transportation from one end of the country to the other is essential in modern times to that freedom of commerce from the restraints which the States might choose to impose upon it that the commerce clause was intended to secure." This clause giving to Congress the power to regulate commerce among the States and with foreign nations, as this court has said before, was among the most important of the subjects which prompted the formation of the Constitution. (Cook *v.* Pennsylvania, 97 U. S., 566–574; Brown *v.* Maryland, 12 Wheat., 419–446.)

And it would be a very feeble and almost useless provision, but poorly adapted to secure the entire freedom of commerce among the States which was deemed essential to a more perfect union by the framers of the Constitution, if, at every stage of the transportation of goods and chattels through the country, a State within whose limits a part of the transportation must be done could impose regulations concerning the price, compensation, or taxation or any other restrictive regulation interfering with and seriously embarrassing this commerce.

That the danger sought to be avoided by conferring upon Congress the power to regulate interstate commerce was not fanciful is shown by the attempts which have been made from time to time by the various States to enact discriminating legislation affecting interstate commerce.

I need not remind the Senate that one of the earliest cases in which the interstate-commerce clause was interpreted by the Supreme Court was a case of that character, where the State of New York had undertaken by its legislation to monopolize the navigable waters of that State. In the great case of Gibbons against Ogden the rule was clearly announced that that was not admissible; that that was a matter which belonged to the National Government; and that no State could be permitted, under the Constitution, to regulate commerce, because that would be to permit what had been done in that very case, namely, to enact hostile and discriminating legislation which would operate against the other States.

We have that trouble going on now in the United States. Congress has held, for example, that insurance does not fall within the operation of the commerce clause. Many of the States have therefore passed laws in effect discriminating against insurance companies of sister States and in favor of their own. It is well known that the necessity of uniform commercial regulation among the States was the principal cause which led to the framing of the Constitution.

If the doctrine should be established that this power, in whole or in part, could be surrendered to the States, we should witness not only conflicts among the legislatures of the several States but between the several States and Congress as well; and, as said by Mr. Justice McLean in Cooley *v.* Board of Wardens, etc. (12 How., 325):

From this race of legislation between Congress and the States, and between the States, if this principle be maintained, will arise a conflict similar to that which existed before the adoption of the Constitution.

If the proposed legislation should be adopted and be held valid, a single shipment of liquor, instead of being subject to one control, namely, that of Congress, might, and undoubtedly would to a large extent, become subject to two conflicting rules. Part of the journey it would be a legitimate article of com-

merce, freely accorded all the rights of protection afforded to other articles, and a part of the journey before the interstate transportation had become complete it would become an illegitimate article, possessing no right of transportation whatever.

A contract between a citizen of Illinois and a citizen of Iowa, by which the former agreed to sell and ship a quantity of liquor to the latter, perfectly valid by the law and enforceable in the courts of Illinois, would be invalidated by the law of Iowa.

II. DIFFERENCE BETWEEN FOREIGN AND INTERSTATE COMMERCE.

It is sometimes loosely said that Congress has the same authority to deal with interstate commerce that it has over foreign commerce, and that inasmuch as the power of Congress to prohibit the importation of articles from foreign countries into the United States is sustained, it has the same power to prohibit transportation from one State to another. It is true that the language of the Constitution conferring the power upon Congress in the two cases is identical; but the objects to which the language refers is altogether different. The Government of the United States in dealing with a foreign government deals with it in its sovereign capacity. Indeed, it does not need the commerce clause to enable it to regulate commerce with foreign nations; it does not need the commerce clause to enable it to forbid transportation altogether from foreign lands to this country. Congress may do in that respect whatever any other sovereign nation may do. We have passed embargo acts, prohibiting absolutely and altogether articles coming from foreign countries into this country. Does anybody pretend that we would have that power in dealing between the State of Pennsylvania and the State of California or between any other two States of the Union? We have no power, as the Supreme Court has said, to place an embargo wholly or partially upon legitimate articles of commerce passing from one State to another. In construing language we must not only pay attention to the words that are used, but we must pay attention to the objects upon which the words operate. If I say, for example, "you have control over your property and your children," I use precisely the same words with reference to both subjects, but I mean different things. Under your control of your property you may sell it, but under the control of your children you may not sell them.

In Groves *v.* Slaughter (15 Pet., 449, 505) the court said:

> The power to regulate commerce among the several States is given in the same section and in the same language, but it does not follow that the power may be exercised to the same extent. * * * The United States are considered as a unit in all regulations of foreign commerce, but this can not be the case where the regulations are to operate among the several States. The law must be equal and general in its provisions. Congress can not pass a nonintercourse law, as among the several States, nor impose an embargo that shall affect only a part of them.

And, yet, what is this legislation but an attempt to impose an embargo, so far as the State of Iowa is concerned or the State of Kansas is concerned or the State of Maine is concerned, against certain articles of commerce being sent from New York or Pennsylvania or Kentucky or some other State?

III. WHEN MAY REGULATION TAKE THE FORM OF PROHIBITION?

It has been urged by some that Congress under its power to regulate commerce may prohibit the transportation of certain articles from one State to another, and if it may do this, it may stop at any point short of absolute prohibition. An examination of the cases, however, will disclose that the power to prohibit has never been sustained except as to things which have been outlawed by the common opinion of the people or by reason of their impurity or diseased condition or misbranding, and so on, are not legitimate articles of commerce.

In the Lottery case—which is the case to which the proponents of this measure themselves refer—(188 U. S., 321) the Supreme Court sustained a law of the first character as—

> necessary to protect the country at large against a species of interstate commerce which, although in general use and somewhat favored in both National and State legislation in the early history of the country, has grown into disrepute and has become offensive to the *entire people of the Nation* (p. 358).

And in that case the court was careful to limit its decision to the article of lottery tickets alone, as though precluding anybody from using it as a precedent for prohibiting any other class of property from being transported. At page 363 the court said:

> We decide nothing more in the present case than that lottery tickets are subjects of traffic among those who choose to sell or buy them; that the carriage of such tickets by independent carriers from one State to another is therefore interstate commerce; that under its power to regulate commerce among the several States Congress, subject to the limitations imposed by the Constitution upon the exercise of the powers granted, has plenary authority over such commerce and may prohibit the carriage of such tickets from State to State.

Therefore, by the express language of the Supreme Court itself in that case, we are precluded from using it as a precedent for prohibiting the carriage of articles from one State to another, unless they are lottery tickets.

Mr. KENYON. Mr. President——

The PRESIDING OFFICER. Does the Senator from Utah yield to the Senator from Iowa?

Mr. SUTHERLAND. I do.

Mr. KENYON. I wish to ask the Senator from Utah one question right on that point. What is the opinion of the Senator from Utah as to whether Congress could, if it so desired, prohibit the transportation of all intoxicating liquors in interstate commerce?

Mr. SUTHERLAND. Mr. President, I intend to discuss that question a little later along, although I may now say to the Senator from Iowa that that question is not involved in this controversy. This is not an attempt upon the part of Congress to prohibit the transportation of intoxicating liquors. Therefore the question is not material to that which we are discussing, but I think whenever intoxicating liquors occupy the same condition in this country which lottery tickets did, there could be no question about the power of Congress then to absolutely prohibit their transportation.

Mr. KENYON. I desire to ask the Senator another question——

Mr. SUTHERLAND. But, I think, until that time comes there is, to say the least, an exceedingly grave doubt as to whether Congress has any such power.

Mr. BORAH. Mr. President, there are more States in the Union in which there is a better crystallized public opinion against the use of liquor than there were against the use of the lottery ticket.

Mr. SUTHERLAND. There are 8 States in the Union which have passed laws prohibiting the sale of intoxicating liquors. There are 40 States under whose laws the sale of intoxicating liquors, under some circumstances, is legitimate and proper, but there is no State in the Union that has thus far undertaken to forbid the purchase or the use of intoxicating liquors.

Mr. BORAH. Not for personal use, and I am not aware of any State that ever prohibited a man having a lottery ticket for his own personal use.

Mr. SUTHERLAND. In the last analysis I rather think that all liquor is for personal use.

Beginning with the assumption that Congress may have power to forbid all interstate transportation of liquors, it is argued that the bill under consideration is a partial exercise of that power and is therefore legal because the whole embraces the parts.

It may be first replied that Congress does not by the proposed act prohibit anything. Congress does not attempt to forbid transportation of intoxicating liquors at all, but, on the contrary, permits unrestricted transportation in all intoxicating liquors, so far as the declarations of Congress are concerned, unless in particular instances there is a State law upon the subject of the use, sale, or possession of intoxicating liquor which somebody connected with the transportation intends to violate. By the proposed act Congress does not attempt to regulate the transportation at all. The shipper will look at the act of Congress in vain for any rule governing his right to ship into another State. He must find his authority not in the law of Congress but in the act of the State legislature, and even there he does not find any definite rule, but in the last analysis his right to ship can only be determined by ascertaining the intention of the consignee or some other person connected with the transaction, which intention may be entirely undisclosed.

But in the face of this condition it is gravely urged that no delegation of authority is made to any State. The fallacy of this contention is so obvious that one can but marvel at the credulity or the assurance of those who proclaim it. To regulate commerce, as said by Chief Justice Marshall in the case of Gibbons against Ogden, is to "prescribe the rule by which commerce is governed." Under the proposed legislation who prescribes this rule? Manifestly not Congress, because that body prescribes no rule whatsoever, but refers to rules to be prescribed by the various States, which rules may be as varied and as numerous as the States themselves.

Mr. McCUMBER. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Utah yield to the Senator from North Dakota?

Mr. SUTHERLAND. I yield to the Senator.

Mr. McCUMBER. I think the Senator has indicated that in his opinion section 2 is unconstitutional as a delegation of authority to the State legislatures or to State laws.

Mr. SUTHERLAND. I have been trying to indicate that.

Mr. McCUMBER. I should like to ask the Senator whether or not, in his opinion, it would be any delegation of authority if that section were so amended that it simply declared, first,

that intoxicating liquors themselves were of such a nature as to be dangerous to public morals and public health, and then provided that they might be introduced into interstate commerce only on condition that they should lose their interstate commerce character the moment they crossed a State line? In that case, the way I put it, the State law is not referred to in any way. All that Congress would say would be: "We let go of this subject, and therefore it falls within the powers of the State itself the moment it crosses the State line."

Mr. SUTHERLAND. Mr. President, I dislike very much to express an opinion upon any matter which, as it seems to me, is not involved in the pending question.

Mr. McCUMBER. I want to say to the Senator that it undoubtedly will be involved before we get through with the matter, and that is the reason I desired his opinion.

Mr. SUTHERLAND. I should like to consider it when it is presented. I doubt very much whether that would help the matter at all, because, after all, we are to determine the substance of this thing. I do not think we can cover it up under any form of words and make that constitutional, by some form of expression or by some legislative argument, which in its essence is unconstitutional.

Mr. McCUMBER. The real point is, Can Congress divest that article of its interstate character the moment it crosses a State line and let go of it at that time?

Mr. SUTHERLAND. I do no think so, Mr. President. I think, so long as intoxicating liquor is recognized by the laws of Congress and by the common consent of the majority of the States of the Union, it can not be declared illegal. In other words, Congress can not in one breath say that a thing is legitimate and then in another breath that it is illegitimate.

But conceding, for the sake of argument, the power of Congress to entirely forbid the shipment of liquor in interstate commerce, it does not follow that it may partially forbid it. If it prohibits, it must do so upon the ground that intoxicating liquor is not a legitimate article of interstate commerce. It would seem to be self-evident that Congress could not, by the same act of legislation, declare a thing to be a legitimate article and also an illegitimate article of commerce, and yet this is precisely what partial prohibition does, since the effect of it is to permit the article to move among some of the States and to forbid it to move among others. In the Lottery case the prohibition against the transportation of lottery tickets was absolute and complete. The rule was uniform. The decision of the Supreme Court would undoubtedly have been otherwise if Congress had provided that lottery tickets might be transported among some of the States and forbidden transportation among others. Whether a given thing is a legitimate article of commerce surely must depend upon the character of the thing itself and not upon the secret purpose which may be entertained by somebody as to its use.

The commodity clause of the Hepburn Act is also cited as illustrating the power of Congress to prohibit, but that was a regulation of an instrumentality of commerce. Congress did not prohibit the transportation of coal, but only prohibited the interstate carrier which produced the coal from itself transporting it. This was purely a regulation of interstate commerce.

Mr. BORAH. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Utah yield to the Senator from Idaho?

Mr. SUTHERLAND. I do.

Mr. BORAH. There was no difference between the two classes of coal in so far as the intrinsic quality of the commodity was concerned. One of them was impressed with the personal ownership, which was the same ownership as that of the carrier, and the other was not. In one instance Congress prohibited the carrying, and in the other instance it did not.

Mr. SUTHERLAND. Yes.

Mr. BORAH. That was because of the impress upon the article of the relationship of the parties to the particular article. Why may we not say that when liquor is to be used in a specific way and for a specific purpose, it shall bear that imprint, and pass out of the channels of interstate trade?

Mr. SUTHERLAND. I have been undertaking to say all along why we can not do it. To my mind, the two cases are entirely different. A railroad company engaged in interstate commerce is an instrumentality of interstate commerce which Congress may regulate. It may not only regulate the articles which are carried in interstate commerce, but it may regulate the instrumentality by which they are carried. In that particular case it does not undertake to regulate the article; it does not attempt to prohibit its being transported; but it says: "You, an instrumentality entirely under the control of Congress so far as regulation is concerned, if you produce this article, must not carry it."

Mr. BORAH. Then that falls back upon the proposition that it was not excluded because of any intrinsic quality of the article, but because of a certain relationship of other parties to the article.

Mr. SUTHERLAND. The *article* was not excluded at all. The *instrumentality* was excluded from carrying it.

Mr. BORAH. We do not exclude the liquor except because of its relationship to certain parties.

Mr. SUTHERLAND. I understand perfectly the position of the Senator from Idaho; but there we were regulating the instrumentality. We may say that certain railroad companies which bear a certain relation to a particular article can not themselves carry it, for reasons of public policy; but that would not prevent the article itself being carried by somebody else.

The Lacey law, which has been referred to, dealt with animals fera naturæ, which have always been held to belong to the State and not subjects of private ownership except with the consent of the State. The effect of the Lacey law therefore is simply to forbid the transportation of an article which is not property and therefore not the subject of commerce.

Reference has been made to the provisions of section 289 of the penal code. By this section Congress adopted for certain purposes the laws of the States in force at the time of the passage of the congressional act. It was as though the law of each State had been set forth in terms in the act of Congress. Instead of doing this the law is indicated by reference instead of by recital, but the law adopted becomes a law of Congress and is not enforced as a law of the State. The section recognizes in the plainest way that Congress would have no power to permit a State to legislate for the Federal Government by providing that these adopted laws should continue in force notwithstanding any subsequent repeal or amendment by the States.

In other words, Congress simply found certain laws upon the statute books of the States which it thought applicable to certain conditions, and by its legislation it said: "We will adopt those laws as laws of Congress." The effect is the same as though it had set them out in full and had said: "This is the law of Congress." But it could not, by any sort of legislation, as has been recognized over and over again, say: "We will adopt any law upon this subject which the States may hereafter adopt," because that would be to delegate the power of Congress. It could not even continue the law in force in an amended condition, because to amend the law is to legislate quite as much as to make it originally. Congress, in the clearest way, has shown that it considers that it has no power to adopt the legislation of a State thereafter to be enacted.

INTOXICATING LIQUOR IS A LEGITIMATE ARTICLE OF COMMERCE.

The next proposition which I desire to discuss very briefly is that intoxicating liquor is a legitimate article of commerce, and so long as this is recognized it can not be denied the right of interstate transportation.

It may be conceded that if the time shall ever come when intoxicating liquor is outlawed by substantially the whole people of the United States, as lottery tickets were outlawed, that Congress may then forbid its transportation upon the ground that it would in that event no longer be a legitimate article of commerce. But this is not the case. To the contrary, it has always been recognized and still is recognized as a legitimate article of commerce, entitled to the protection of the Federal Government the same as any other article.

Mr. GALLINGER. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Utah yield to the Senator from New Hampshire?

Mr. SUTHERLAND. I yield to the Senator.

Mr. GALLINGER. I am interested in the Senator's discussion, as we all are interested in it. I should like to have the Senator restate his view, if he pleases, that a law must be uniform, or its application must be uniform, in all the States. Is that the Senator's position?

Mr. SUTHERLAND. Not quite that. If the Senator will be patient, I have, later along, some authorities to quote upon that precise question; and I intend to discuss it in that connection.

Mr. GALLINGER. I wanted, at this point, to suggest that in the pure-food law we provided that condemned goods might be excluded from any State where the State laws were against them.

Mr. SUTHERLAND. Oh, yes.

Mr. GALLINGER. And that it did not cover the broad proposition that I thought the Senator was arguing.

Mr. SUTHERLAND. Impure food might be excluded by the State itself. The State has done that. Diseased meats or

impure food can be excluded by the State without any law of Congress.

Mr. GALLINGER. And because of that fact they could not be transported to that State through the medium of interstate commerce?

Mr. SUTHERLAND. Yes; because they are impure foods; and being impure, they are not legitimate articles of commerce.

Mr. GALLINGER. We think liquors are worse than impure. [Applause in the galleries.]

Mr. SUTHERLAND. I agree with the Senator. The Senator can not get up any argument with me about that.

The PRESIDENT pro tempore. It is against the rules of the Senate for any manifestations of approval or disapproval to be had in the Chamber, especially in the galleries. The Chair admonishes the galleries that if it is repeated, the Senate will have to take action to prevent its recurrence.

Mr. SUTHERLAND. Mr. President, I hope very much that a great piece of legislation like this will not be passed by the Senate of the United States in a spirit of mere emotion. There are some pretty grave questions involved in this matter, and I am undertaking to discuss them; and I am undertaking to discuss them under my oath as a Senator.

What I had said when the Senator from New Hampshire interrupted me is borne out by the decisions. In Bowman *v.* Chicago & Northwestern Railway Co. (125 U. S., 465, 501) the court uses this language:

> What is an article of commerce is determinable by the usages of the commercial world and does not depend upon the declaration of any State. The State possesses the power to prescribe all such regulations with respect to the possession, use, and sale of property within its limits as may be necessary to protect the health, lives, and morals of its people, and that power may be applied to all kinds of property, even that which in its nature is harmless. But the power of regulation for that purpose is one thing and the power to exclude an article from commerce by a declaration that it shall not thenceforth be the subject of use and sale is another and very different thing. If the State could thus take an article from commerce, its power over interstate commerce would be superior to that of Congress, where the Constitution has vested it.

In the License cases (5 How., 504, 599) Mr. Justice Catron said:

> If from its nature it does not belong to commerce, or if its condition from putrescence or other cause is such when it is about to enter the State that it no longer belongs to commerce, or, in other words, is not a commercial article, then the State power may exclude its introduction. And, as an incident to this power, a State may use means to ascertain the fact. And here is the limit between the sovereign power of the State and the Federal power. That is to say, that which does not belong to commerce is within the jurisdiction of the police power of the State, and that which does belong to commerce is within the jurisdiction of the United States. And to this limit must all the general views come, as I suppose, that were suggested in the reasoning of this court in the cases of Gibbons *v.* Ogden, Brown *v.* The State of Maryland, and New York *v.* Miln. What, then, is the assumption of the State court? Undoubtedly, in effect, that the State had the power to declare what should be an article of lawful commerce in the particular State, and, having declared that ardent spirits and wines were deleterious to morals and health, they ceased to be commercial commodities there, and that then the police power attached, and consequently the powers of Congress could not interfere. The exclusive State power is made to rest, not on the fact of the state or condition of the article nor that it is property usually passing by sale from hand to hand, but on the declaration found in the State laws and asserted as the State policy that it shall be excluded from commerce. And by this means the sovereign jurisdiction in the State is attempted to be created in a case where it did not previously exist. If this be the true construction of the constitutional provision, then the paramount power of Congress to regulate commerce is subject to a very material limitation, for it takes from Congress and leaves with the States the power to determine the commodities or articles of property which are the subjects of lawful commerce. Congress may regulate, but the States determine what shall or shall not be regulated. Upon this theory the power to regulate commerce instead of being paramount over the subject would become subordinate to the State police power, for it is obvious that the power to determine the articles which may be the subjects of commerce, and thus to circumscribe its scope and operation is, in effect, the controlling one. The police power would not only be a formidable rival, but in a struggle must necessarily triumph over the commercial power, as the power to regulate is dependent upon the power to fix and determine upon the subjects to be regulated. The same process of legislation and reasoning adopted by the State and its courts could bring within the police power any article of consumption that a State might wish to exclude whether it belonged to that which was drank or to food and clothing, and, with nearly equal claims to propriety, as malt liquors and the produce of fruits other than grapes stand on no higher ground than the light wines of this and other countries, excluded, in effect, by the law as it now stands. And it would be only another step to regulate real or supposed extravagance in food and clothing.

Not only are intoxicating liquors recognized by the usages of the civilized world to be legitimate articles of commerce, but Congress has itself repeatedly emphasized their character in this respect by legislation which has been in force since the foundation of the Government and still remains upon the statute books. It collects millions of dollars annually upon the manufacture and sale of intoxicating liquors. It provides for the supervision of their manufacture and their inspection. It levies duties upon all kinds of intoxicating liquor when imported from foreign countries and thereby invites their importation into the United States.

In Shollenberger *v.* Pennsylvania (171 U. S., 1, 7), the Supreme Court, speaking of oleomargarine, said:

> In the examination of this subject the first question to be considered is whether oleomargarine is an article of commerce. No affirmative evidence from witnesses called to the stand and speaking directly to that subject is found in the record. We must determine the question with reference to those facts which are so well and universally known that courts will take notice of them without particular proof being adduced in regard to them, and also by reference to those dealings of the commercial world which are of like notoriety.
>
> Any legislation of Congress upon the subject must, of course, be regarded by this court as a fact of the first importance. If Congress has affirmatively pronounced an article to be a proper subject of commerce, we should rightly be influenced by that declaration.

The court then proceeds to refer to the various statutes passed by Congress, as, for example, the act imposing a tax and regulating the manufacture and sale, importation, and exportation of oleomargarine and other goods of the same character, and at page 9 it is said:

> This act shows that Congress at the time of its passage in 1886 recognized the article as a proper subject of taxation, and as one which was the subject of traffic and of exportation to foreign countries, and of importation from such countries. Its manufacture was recognized as a lawful pursuit, and taxation was levied upon the manufacture of the article, upon the wholesale and retail dealers therein, and also upon the article itself.

The court also refers to the fact that the reports of the Secretary of the Treasury show that tax receipts from this source during the nine years beginning with the year 1887 amounted to over $10,000,000, and at page 12, summing up, the court concludes:

> Upon all these facts we think it apparent that oleomargarine has become a proper subject of commerce among the States and with foreign nations.

And the court adds:

> The general rule to be deduced from the decisions of this court is that a lawful article of commerce can not be wholly excluded from importation into a State from another State where it was manufactured or grown. A State has power to regulate the introduction of any article, including a food product, so as to insure purity of the article imported, but such police power does not include the total exclusion even of an article of food.

The same rule has been recognized with reference to intoxicating liquors by repeated decisions of the Supreme Court, the last expression of the court being found in the case of Louisville & Nashville Railway Co. *v.* Cook Brewing Co. (223 U. S., 70). Mr. Justice Lurton, speaking for the court, said:

> By a long line of decisions, beginning even prior to Leisy *v.* Hardin (135 U. S., 100), it has been indisputably determined:
>
> *a.* That beer and other intoxicating liquors are a recognized and legitimate subject of interstate commerce.
>
> *b.* That it is not competent for any State to forbid any common carrier to transport such articles from a consignor in one State to a consignee in another.
>
> *c.* That until such transportation is concluded by delivery to the consignee such commodities do not become subject to State regulation restraining their sale or disposition.

It is therefore no longer an open question that intoxicating liquors are legitimate articles of interstate commerce which are entitled to the protection of the Federal authority to the same extent and under the same conditions as other commodities. Indeed, the bill under consideration itself recognizes the general legitimacy of this species of property as an article of commerce. If the article is outlawed in any particular instance under the provisions of this proposed law, it will not be by the will of Congress but by the will of the particular State or States. In particular instances the interstate shipment of intoxicating liquors will be forbidden not because Congress has declared or intimated in the slightest degree that they are noxious, but because, and only because, somebody intends to violate a State law.

It has been repeatedly determined that although the several States possess their undiminished powers of police, that no law, although otherwise a proper exercise of the police power, is valid if the effect of such law is to substantially regulate interstate commerce. The Constitution is declared to be the supreme law of the land. This supreme law confers the power to regulate commerce upon Congress, and thereby withdraws it from the States. If, therefore, a State law which has the effect of regulating commerce be upheld, immediately that law becomes superior to the Constitution. In the absence of permissive legislation by Congress, it is perfectly clear that no State has the power to regulate in any degree interstate commerce, and the reason is that this power has been vested in Congress. Hence a State law of this character is void not because it is opposed to any congressional law, not because it is opposed to the will of Congress, not because it has not been permitted by Congress, but because, and only because, it is in violation of the Constitution of the United States. It would seem to be self-evident that if the action of a State is void because in conflict with the Constitution, that no act of Congress, which is the mere creature of the Constitution, either by affirmative action, by removing

obstacles, or by declaration of any character, could render the State action valid. To concede such a proposition would be to admit an astounding paradox, namely, that while Congress may not itself violate the Constitution, it may in some manner justify or absolve a State in doing so. No sort of specious reasoning can establish the proposition that any department of the Federal Government, or that all of them combined, by any proceeding, can change that which is opposed to the Constitution so as to be in harmony with the Constitution, and yet it is to this conclusion that the proponents of the pending measure are inevitably driven.

Mr. Justice Catron in the License cases pointed out the distinction between the police power of the State and the commerce power of the United States in the following language:

> And here is the limit between the sovereign power of the State and the Federal power. That is to say, that which does not belong to commerce is within the jurisdiction of the police power of the State, and that which does belong to commerce is within the jurisdiction of the United States.

It must be conceded that any State law now in existence attempting to interfere with the interstate transportation of intoxicating liquor before such transportation is completed by delivery would be unconstitutional. Upon what theory can Congress pass legislation which will make an unconstitutional enactment constitutional? And yet it is gravely asserted that upon the passage of this bill State statutes concededly unconstitutional will become valid and operative.

Mr. Chief Justice Taney, in the License cases (5 How., 580), said:

> But it is equally clear that as to all future laws by the States, if the Constitution deprive them of the power of making any regulations on the subject, an act of Congress could not restore it.
>
> For it will hardly be contended that an act of Congress can alter the Constitution and confer upon a State a power which the Constitution declares it shall not possess. And if the grant of power to the United States to make regulations of commerce is a prohibition to the States to make any regulation upon the subject, Congress could no more restore to the States the power of which they were thus deprived than it could authorize them to coin money, or make paper money a tender in the payment of debts, or to do any other act forbidden to them by the Constitution.

In the case of Hanley *v.* Kansas City Southern Railway Co. (187 U. S., 617) the Supreme Court said:

> Transportation for others, as an independent business, is commerce, irrespective of the purpose to sell or retain the goods which the owner may entertain with regard to them after they shall have been delivered.

That being so, any law whose primary effect is to interfere with the transportation of an article of commerce from one State to another before the delivery to the consignee, no matter what the consignee or anybody else may intend to do with it, is a regulation of interstate commerce. The contract of transportation is to carry from the consignor in one State to the consignee in another. This transportation is a single, indivisible thing, and, as said in the case of Gibbons *v.* Ogden, "the power must be exclusive. It can reside but in one potentate, and hence the grant of this power carries with it the whole subject, leaving nothing for the State to act upon." Until delivery to the consignee there is no place where you can stop and say, thus far it is interstate transportation and thereafter intrastate transportation. As expressed in the same great case, "the word 'among' means intermingled with. A thing which is among others is intermingled with them. Commerce among the States can not stop at the external boundary line of each State, but may be introduced into the interior."

If we may surrender to one State the authority to interfere with a shipment of goods from another State the moment it crosses the boundary line of the former, it logically follows that we may likewise surrender the power to the latter State to interfere with the shipment until it reaches the boundary line, and this would be equivalent to a total surrender of the whole power. The State in which the shipment originates being permitted to deal with the matter until it reached the boundary line and the State to which the shipment is destined being permitted to deal with it afterwards, the effect would be to prevent the shipment altogether, not by the exercise of the regulative power of Congress, but by the exercise of that power by the several States, and thus a power which the people have affirmatively devolved upon Congress would be delegated to other and distinct governments.

V. DELEGATION OF POWER UNDER BOTH SECTIONS.

I have perhaps already sufficiently discussed the proposition that the pending bill constitutes an attempt to delegate the power of Congress over interstate commerce to the States. That this is beyond the power of Congress no citation of authorities is necessary to establish. The Supreme Court has repeatedly so declared.

In determining the validity of a statute we must have regard to its substance rather than its form. No matter in what terms the statute may be written, if its natural and reasonable effect is to accomplish an unconstitutional result it is void; or, as stated by the Supreme Court in the case of Reid v. Colorado (187 U. S., 137, 150):

> * * * The purpose of a statute, in whatever language it may be framed, must be determined by its natural and reasonable effect.

In the case of Mugler *v.* Kansas (123 U. S., 623) Mr. Justice Harlan said:

> The courts are not bound by mere forms nor are they to be misled by mere pretense. They are at liberty—indeed they are under a solemn duty—to look at the substance of things whenever they enter upon inquiry whether the legislature has transcended the limits of its authority.

However artful the language, however cunning the hand of the draftsman, this effect, when discovered, determines the validity or invalidity of the act. A moment's reflection, it seems to me, will convince any candid mind that the effect of this proposed legislation is to give vitality and validity to an act of a State government which, in the absence of the proposed legislation, would be unconstitutional and void.

Congress can neither take from nor add to the powers of the States. It has been claimed that the validity of the pending measure is sustained by the Supreme Court in upholding the Wilson Act, but the Supreme Court has been careful to say in several cases, notably in Rhodes *v.* Iowa (170 U. S., 412), that the effect of the Wilson Act was only to permit the State jurisdiction to attach after the delivery of the consignment to the consignee, so as to permit the State to regulate and control the sale of the article, whether in the original package or not, after such delivery, and that this right of sale was only an incident of interstate commerce, and not such commerce in its fundamental aspect. In other words, the substantive transportation of a commodity from one State to another ended upon delivery to the consignee. The right of the consignee to sell in the unbroken package was not a fundamental part of the interstate transaction but was a mere incident resulting therefrom.

It is urged, however, that this bill does not permit the State to legislate with reference to interstate commerce, but does nothing more than remove an impediment to the operation of the police power of the State. But it does more than this. In the absence of the proposed legislation by Congress the police power is inoperative because it conflicts with the superior authority of the commerce clause of the Constitution. This bill therefore seeks to give vitality to the law of a State which has none in its absence, and however we may endeavor to reach a contrary result by forms of words or devious methods of reasoning, we are at last always confronted with the same conclusion, namely, that the effect of the legislation is to permit the State to do something which the Constitution forbids.

Under section 1 of the bill no rule governing the interstate transaction is prescribed by Congress. In every instance we must determine whether a particular shipment may be made, not by reference to any regulation prescribed by Congress but by reference to a law of the State. As accurately said by one of the proponents of this measure:

> The beauty about this law is that it expands and contracts with the legislation of the State.

In other words, the State by its legislation may admit the article or forbid its admission. It may admit it this year and prohibit its admission next year. It may admit it under some circumstances to-day and under totally different circumstances to-morrow.

Whether intoxicating liquor shall or shall not be an article of lawful commerce depends wholly upon the will of the State. That the power to prescribe what shall constitute a lawful article of commerce is the power to regulate commerce is clearly shown by Mr. Justice Catron in the License cases (5 How., 599), where that distinguished justice said:

> What, then, is the assumption of the State court? Undoubtedly, in effect, that the State had the power to declare what should be an aricle of lawful commerce in the particular State; and having declared that ardent spirits and wines were deleterious to morals and health, they ceased to be commercial commodities there, and that then the police power attached, and consequently the powers of Congress could not interfere. The exclusive State power is made to rest not on the fact of the state or condition of the article nor that it is property usually passing by sale from hand to hand, but on the declaration found in the State laws and asserted as the State policy that it shall be excluded from commerce. And by this means the sovereign jurisdiction in the State is attempted to be created in a case where it did not previously exist.
>
> If this be the true construction of the constitutional provision, then the paramount power of Congress to regulate commerce is subject to a very material limitation; for it takes from Congress and leaves with the States the power to determine the commodities or articles of property which are the subjects of lawful commerce. Congress may regulate, but the States determine what shall or shall not be regulated. Upon this theory the power to regulate commerce, instead of being paramount over the subject, would become subordinate to the State police power, for it is obvious that the power to determine the articles which may be the subjects of commerce, and thus to circumscribe its scope and operation, is in effect the controlling one. The police power would

not only be a formidable rival, but in a struggle must necessarily triumph over the commercial power, as the power to regulate is dependent upon the power to fix and determine upon the subjects to be regulated.

The same process of legislation and reasoning adopted by the State and its courts could bring within the police power any article of consumption that a State might wish to exclude, whether it belonged to that which was drank or to food and clothing; and with nearly equal claims to propriety, as malt liquors and the produce of fruits other than grapes stand on no higher grounds than the light wines of this and other countries, excluded, in effect, by the law as it now stands. And it would be only another step to regulate real or supposed extravagances in food and clothing. * * * For these reasons I think the case can not depend on the reserved power in the State to regulate its own police.

Speaking of the Wilson Act, in Rhodes *v.* Iowa (170 U. S., 412, 422), the court said:

If the act of Congress be construed as reaching the contract for interstate shipment made in another State, the necessary effect must be to give to the laws of the several States extraterritorial operation; for, as held in the Bowman case, the inevitable consequence of allowing a State law to forbid interstate shipments of merchandise would be to destroy the right to contract beyond the limits of the State for such shipments. If the construction claimed be upheld, it would be in the power of each State to compel every interstate-commerce train to stop before crossing its borders and discharge its freight, lest by crossing the line it might carry within the State merchandise of the character named covered by the inhibitions of a State statute.

And further on, at page 424, the court said that while the right to sell free from State interference interstate commerce merchandise was held—

to be an essential incident to interstate commerce, it was yet but an incident, as the contract of sale within a State in its nature was usually subject to the control of the legislative authority of the State. On the other hand, the right to contract for the transportation of merchandise from one State into or across another involved interstate commerce in its fundamental aspect, and imported in its very essence a relation which necessarily must be governed by laws apart from the laws of the several States, since it embraced a contract which must come under the laws of more than one State.

In the Bowman case it was said:

Has the law of Iowa any extraterritorial force which does not belong to the State of Illinois? If the law of Iowa forbids the delivery and the law of Illinois requires the transportation, which of the two shall prevail? How can the former make void the latter?

In American Express Co. *v.* Iowa (196 U. S., 133, 143) the Supreme Court, after referring to the preceding cases, says:

Those cases rested upon the broad principle of the freedom of commerce between the States and of the right of a citizen of one State to freely contract to receive merchandise from another State, and of the equal right of the citizen of a State to contract to send merchandise into other States. They rested also on the obvious want of power of one State to destroy contracts concerning interstate commerce valid in the States where made.

In Vance *v.* Vandercook (170 U. S., 438, 452) the court said:

The right of persons in one State—

And I invite particular attention to this case—

The right of persons in one State to ship liquor into another State to a resident for his own use is derived from the Constitution of the United States, and does not rest on the grant of the State law.

And again Mr. Justice White said:

The right of the citizen of another State to avail himself of interstate commerce can not be held to be subject to the issuing of a certificate by an officer of the State of South Carolina without admitting the power of that officer to control the exercise of the right. But the right arises from the Constitution of the United States; it exists wholly independent of the will of either the law-making or the executive power of the State; it takes it origin outside of the State of South Carolina and finds its support in the Constitution of the United States.

And at page 446:

In the inception it is necessary to bear in mind a few elementary propositions which are so entirely concluded by the previous adjudications of this court that they need be only briefly recapitulated. * * *

(b) Equally well established is the proposition that the right to send liquors from one State into another, and the act of sending same is interstate commerce, the regulation whereof has been committed by the Constitution of the United States to Congress, and hence that a State law which denies such a right, or substantially interferes with or hampers the same, *is in conflict with the Constitution of the United States.*

How can a right derived from the Constitution be taken away by an act of Congress or by an act of the State, or by the combined acts of both Congress and the State? The right of a citizen of one State to contract with a citizen of another State for the sale and delivery of any legitimate article of commerce is equally derived from the Constitution and not from the grant of any State law. Upon what principle, therefore, can a State law prevent the execution of this contract, the right to enter into which is derived from the Constitution? And if a State law attempting to do so be void as an interference with interstate commerce in its fundamental aspect, upon what theory may Congress vitalize it? To ask the question is to answer it.

The sale of an article in the unbroken package is an incident of commerce, but it is not a necessary and fundamental part of it, for interstate commerce may be complete without any sale—and very often is where goods are imported for personal use—but without delivery to the consignee the interstate transaction has failed of fulfillment altogether.

Mr. Justice Woodbury, in the License cases, said (5 How., 619):

And what power or measure of the General Government would a prohibition of sale within a State conflict with if it consisted merely in regulations of the police or internal commerce of the State itself? There is no contract, expressed or implied, in any act of Congress that the owners of property, whether importers or purchasers from them, shall sell their articles in such quantities or at such times as they please within the respective States. Nor can they expect to sell on any other or better terms than are allowed by each State to all its citizens, or in a manner different from what has comported with the policy of most of the old States, as well before as since the Constitution was adopted. Any other view would not accord with the usages of the country, or the fitness of things, or the unquestioned powers of all sovereign States, and, as is admitted, even of those in this Union, to regulate both their internal commerce and general police. The idea, too, that a prohibition to sell would be tantamount to a prohibition to import, does not seem to me either logical or founded in fact. For, even under a prohibition to sell, a person could import, as he often does, for his own consumption and that of his family and plantations.

Now I come to the question which the Senator from New Hampshire [Mr. GALLINGER] suggested a few moments ago.

VI. THE POWER TO REGULATE INTERSTATE COMMERCE IS ESSENTIALLY A UNIT AND NOT SUBJECT TO A MULTITUDE OF SYSTEMS.

Since the purpose of conferring authority to regulate interstate commerce upon Congress was to prevent a multiplicity of diverse and conflicting rules made by the separate States, it would seem to follow that the regulation of any given article must be uniform in character, and that varying regulations could not be justified upon the varying desires or opinions of the several States. If this were not so the evils which the consolidation of this power in Congress was intended to prevent would still exist.

In Robbins *v.* Shelby Taxing District (120 U. S., 489, 494) the Supreme Court said:

In a word, it may be said that in the matter of interstate commerce the United States are but one country, and are and must be subject to one system of regulations and not to a multitude of systems. The doctrine of the freedom of that commerce, except as regulated by Congress, is so firmly established that it is unnecessary to enlarge further upon the subject.

In United States *v.* E. C. Knight Co. (156 U. S., 1, 32) Mr. Justice Harlan in a dissenting opinion said:

Commerce among the States, as this court has declared, is a unit, and in respect of that commerce this is one country and we are one people. It may be regulated by rules applicable to every part of the United States, and State lines and State jurisdiction can not interfere with the enforcement of such rules. The jurisdiction of the General Government extends over every foot of territory within the United States. Under the power with which it is invested Congress may remove unlawful obstructions, of whatever kind, to the free course of trade among the States. In so doing it would not interfere with the "autonomy of the States," because the power thus to protect interstate commerce is expressly given by the people of all the States. Interstate intercourse, trade, and traffic are absolutely free, except as such intercourse, trade, or traffic may be *incidentally* or *indirectly* affected by the exercise by the States of their reserved police powers.

In Groves *v.* Slaughter (15 Pet., 505) this language was used:

The law must be equal and general in its provisions. Congress can not pass a nonintercourse law as among the several States nor impose an embargo that shall affect only a part of them.

In Oregon Steam Navigation Co. *v.* Winsor (20 Wall., 67) the court said:

This country is substantially one country, especially in all matters of trade and business.

In Hall *v.* De Cuir (95 U. S., 485, 507) the Supreme Court said:

Commerce among the several States as well as commerce with foreign nations requires uniformity of regulation; and that power is by the Constitution vested exclusively in Congress, as appears by the Constitution itself and by an unbroken course of the decisions of this court, covering a period of more than half a century.

In Walling *v.* Michigan (116 U. S., 446, 455), the court said:

We have so often held that the power given to Congress to regulate commerce with foreign nations, among the several States and with the Indian tribes is exclusive in all matters which require or only admit of general and uniform rules, and especially as regards any impediment or restriction upon such commerce that we deem it necessary merely to refer to our previous decisions on the subject, the most important of which are collected in Brown *v.* Houston (114 U. S., 622, 631) and need not be cited here.

And on page 456, quoting from Mobile *v.* Kimball (102 U. S., 691, 697), the court, speaking of the subjects of interstate commerce which are subject only to the exclusive regulation of Congress, said:

Some of them are national in their character and admit and require uniformity of regulation, affecting alike all of the States; others are local or are mere aids to commerce and can only be properly regulated by provisions adapted to their special circumstances and localities. Of the former class may be mentioned all that portion of commerce with foreign countries or between the States which consists in the transportation, purchase, sale, and exchange of commodities. Here there can of necessity be only one system or plan of regulation, and that Congress alone can prescribe. Its nonaction in such cases with

respect to any particular commodity or mode of transportation is a declaration of its purpose that the commerce in that commodity or by that means of transportation shall be free. There would otherwise be no security against conflicting regulations of different States, each discriminating in favor of its own products or citizens and against the products and citizens of other States. And it is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign nations and among the States was to insure uniformity of regulation against conflicting and discriminating State legislation.

Suppose the proposed bill should be enacted. In the course of time somebody violates it. What follows? So far as the United States is concerned, nothing whatever. No penalty is prescribed by way of fine or imprisonment or forfeiture of goods or otherwise. So far as the Federal Government is concerned, the enactment will not be in any real sense a law at all, but only a piece of gratuitous and more or less irrelevant advice, and this having been given Congress simply washes its hands of the whole affair and retires permanently from the field. But the State of Kansas, for example, having by its law prohibited the sale of intoxicating liquors and authorized a seizure and confiscation of such liquors within the State stops an interstate train at the State line and seizes a shipment of beer which it is suspected is being imported for the purpose of sale in violation of the State law. In the proceedings which follow the consignor, the consignee, or the railway company whose interstate operations have been interrupted challenges the action of the State as constituting a regulation of interstate commerce and therefore beyond the power of the State. What, then, must be the concession and contention of the State?

Obviously it must put in a plea analogous to a plea of confession and avoidance. It must obviously concede that its statutes and proceedings do constitute a regulation of interstate commerce, and one therefore prima facie beyond the authority of the State, but that this want of power on the part of the State has been supplied by the authorization or the permission of Congress. In the last analysis, the legality of the State action must rest wholly and alone upon the Federal statute, and whether we call it a grant or a concession or a permission, or by any other name, or by no name at all, in substance and effect a State power has been created or amplified by an act of Congress.

Over and over again we have been assured that this is not an attempt to delegate any congressional power to the State or to add to the power of a State, neither of which, it is admitted, can be done, but that the effect of the legislation is only to remove a little impediment which now exists to the exercise of the State power. Let it be conceded. What then? The pertinent inquiry suggests itself, What is this impediment which stands in the way of the State now doing what it will be permitted to do hereafter by virtue of this act of Congress? Is it a Federal statute which Congress may modify or repeal at pleasure? No. Is it some form of manacle which, Congress having forged, Congress may loose; some restraint which, having been imposed by Congress or some inferior authority, may be removed by Congress? No. Senators may delude themselves by ingenious phrases and plausible forms of lip logic into the belief that they are following straight paths, but always, like bewildered travelers lost in the woods, they must come back to the same point again and again, and that point is that the impediment which they seek to remove is one imposed by the Constitution of the United States, to prevail against which Congress is as helpless as the States themselves. Approached from whatsoever angle we please, this little impediment to be brushed aside so unceremoniously always reveals itself as the Constitution, which stands at the gate like the "flaming sword, which turned every way to keep the way of the tree of life." The conclusion is irresistible that we are by this legislation attempting to enable a State to exercise a power under and by force of an act of Congress which the State has no authority to exercise under the Constitution, and if our act be valid we shall have succeeded in making a Federal statute superior to the Federal Constitution.

There has never been a time in all our history when the necessity of adhering to the limitations of the Federal Constitution was more imperious than to-day. Constitutional principles must be made with reference to the generality of cases and not to exceptions. General rules sometimes of necessity operate harshly in occasional instances, and the temptation is always great to ignore or violate these principles whenever we come into contact with one of these exceptional cases. The danger, however—and it is a very real and grave one—is that if we violate the Constitution in order to bring about a good result, or what we fancy to be a good result, we have opened the door of opportunity for future violations where the result may be neither good nor wise.

As said by the Supreme Court in Scott *v.* Donald (165 U. S., 58, 91):

The evils attending the vice of intemperance in the use of spirituous liquors are so great that a natural reluctance is felt in appearing to interfere, even on constitutional grounds, with any law whose avowed purpose is to restrict or prevent the mischief.

But, as said by Chief Justice Fuller in the Knight case (156 U. S., 1, 13):

It is vital that the independence of the commercial power and of the police power and the delimitation between them, however sometimes perplexing, should always be recognized and observed, for while the one furnishes the strongest bond of union, the other is essential to the preservation of the autonomy of the States as required by our dual form of government—

And then follow these words of wisdom and of warning—

and acknowledged evils, however grave and urgent they may appear to be, had better be borne than the risk be run, in the effort to suppress them, of more serious consequences by resort to expedients of even doubtful constitutionality.

I have never subscribed to the doctrine that the end justifies the means. The step from virtuous necessity to doubtful expediency is very short and easily taken. We should be extremely careful not to do a forbidden thing upon the plea that good will result, lest we thereby establish a precedent for doing the forbidden thing to the undesired end that evil may follow. Whenever we violate the Constitution an example is set which is quite likely to come back sooner or later to vex us. It was Portia, I think, who said:

'Twill be recorded for a precedent,
And many an error by the same example
Will rush into the State.

Mr. President, I do not for one moment doubt the honesty of purpose of the good men and good women of the country who are urging upon Congress the adoption of this legislation. The sincerity of their belief in its wisdom and its legality I do not question. I sympathize with the purpose that they have in view, namely, to reduce the evils of intemperance; but, sir, that is not the end of the matter. Superior to my own desires and superior to the wishes of any part of the people stand the sovereign commands of all the people, which they have embodied in their Constitution, and these do not admit of disobedience or evasion upon any pretext. Honest legislators may differ, and frequently do differ, as to the interpretation and application of these commands, but no man who, after study and reflection, has reached a definite and settled conclusion as to the meaning of one of these commands may act in opposition to it without breaking faith with his own conscience.

If a man is guilty of an overt act of dishonesty, he may be compelled to suffer the penalty of the law and the scorn of mankind. What he does may be seen by others than himself, but into the secret chamber of his own intellect no eye save his own may penetrate. In that domain each of us is his own advocate and finally his own sole judge. If he be guilty of intellectual dishonesty his debasement, if he so wills, can be known only to himself, but while he pays no outward penalty he pays, nevertheless, in the uneasy and unhappy consciousness that he has betrayed himself. To be mistaken in one's judgment is a common and comparatively trivial fault; to deliberately violate one's honest judgment is as indefensible and contemptible an act as any man can commit. Everyone of necessity spends more time with himself than with anybody else, and he ought to so conduct himself that he may feel in decent company the major part of the time. The people of the country who are urging this legislation are not sworn to uphold and defend the Constitution. I am. The duty and responsibility of keeping the oath is mine, not theirs.

I am willing to go as far as any man ought to go in a liberal and broad construction of the Constitution in the interest of beneficent legislation. I am not willing to violate the plain terms of that great charter for the advancement of any cause, however near it may lie to my own heart or the hearts of others.

During the delivery of Mr. SUTHERLAND'S speech,

Mr. GALLINGER. Mr. President, I rise to ask that the unanimous-consent agreement may be read from the desk.

The PRESIDENT pro tempore. The hour of 3 o'clock having arrived, the Secretary will read the unanimous-consent agreement.

The Secretary read as follows:

It is agreed by unanimous consent that on Monday, February 10, 1913, at 3 o'clock, p. m., the bill (S. 4043) to prohibit interstate commerce in intoxicating liquors in certain cases be taken up for consideration, not to interfere with appropriation bills, and that the vote be taken on all amendments pending and amendments to be offered, and upon the bill itself, not later than the hour of 6 o'clock on that day.

The PRESIDENT pro tempore. The Chair will now formally lay the bill before the Senate. The title will be stated.

The SECRETARY. A bill (S. 4043) to prohibit interstate commerce in intoxicating liquors in certain cases.

The Senate, as in Committee of the Whole, resumed the consideration of the bill.

After the conclusion of Mr. SUTHERLAND'S speech,

Mr. THORNTON. Mr. President, I presume that other Senators have had a common experience with myself in the matter of receiving requests to vote against the pending bill, generally known as the Kenyon-Sheppard bill and generally understood to have for its object the prohibition of the shipment of liquor from a State in which it is lawful to sell it, to a State in which its sale is not legalized; an understanding based on a popular error, for the bill does not prohibit such shipment, but does subject it to the authority of the police power of the other State when it enters its jurisdiction and before it reaches the consignee, provided it had been purchased for the purpose of violating the laws of the State.

Powerful political influences from my own State, which is not a prohibition State except in spots, have been brought to bear on me by those who have been my personal as well as political friends, in the effort to have me vote against the passage of the bill, the parties generally basing their opposition on the two-fold ground that it was unconstitutional and a violation of the right of personal liberty.

To all I have answered that I could not do so consistently with my views of the rights of the respective States of the Union.

If either of these objections appeared to me well founded, I would vote against the bill, for I have taken an oath to obey the Constitution of the United States and I am now, as I have ever been, a strong believer in the right of the personal liberty of the individual citizen.

But while there may be a doubt in my mind as to the constitutionality of the bill, that doubt is not sufficiently strong to make me vote against its passage, for I can not justify myself in taking the position that unless a legislator was absolutely sure of the constitutionality of an act submitted to him it is his duty to vote against it, even though he thought the motive for its inception was proper and the result of its passage would be beneficial.

I hold, rather, that I have no right in such a case to attempt to block what I considered proper legislation, but that it would be my duty to assist in its passage and let the courts pass on the mooted question.

And so in this storm the safe harbor of unconstitutionality is not open to me for entrance.

So much for that part of the question.

As for the second part of the proposition, it will not be disputed that the right of the personal liberty of the individual citizen is subordinated to the greater right of the State to control that liberty within such bounds as are considered proper with reference to the well-being of the community at large.

The right of a State in the exercise of its police powers to regulate the liquor traffic within its boundaries or to suppress such traffic entirely will not be denied.

This bill permits the States to exercise the same police power over liquor shipped into its territory from another State that it could exercise over it if the shipment originated within its territory, a power that can not be exercised except for the purpose of preventing the violation of its own laws.

The effect of its passage will be to prevent the General Government from lending the force of its laws, either to assist the citizens of one State to violate the laws of another or to assist the citizens of the other State to violate the laws of their own.

I believe that while the General Government should be supreme in the exercise of the authority conferred on it by the Constitution, the States composing it should be supreme in the exercise of the authority reserved to them by the Constitution.

I believe further that it is the duty of the States to stand ready to assist the General Government in the exercise of its constitutionally conferred powers and that it is equally the duty of the General Government to stand ready to assist the States in the exercise of their constitutionally reserved powers to the extent not only of refraining from enacting laws that may tend to obstruct the proper State authority, but also of amending or repealing any existing laws that may have such a tendency.

Holding such views, I can not vote against the pending bill, but must vote for its passage.

Mr. WEBB. Mr. President, the liquor evil has been before the world since the beginning of history. The history of the Jews, the Greeks, and the Romans, the three ancient civilizations best known to us, show the different methods of approach to this great question. A referendum to the citizens of Rome, the imperial city that ruled the world, on the banishment of the temples of Bacchus, as saloons were then called, notwithstanding their protection of a god, resulted in Rome going dry. Rome went dry on the political slogan that the temples of Bacchus were headquarters of the demoralization of youth and the white-slave traffic. The saloon still maintains its ancient reputation, and in our time it has eliminated none of its evils, but has added others unknown to the ancient civilizations.

Bacchus, a god of great power, was not, I am glad to say, infinite in his attributes nor universal in his jurisdiction.

Bacchus was a riotous god. His birth was a tragedy amid thunder and lightning. His mother was consumed by the lightning and immediately on his birth departed to Hades. Hence the epithet, fireborn. The orphaned Bacchus was never mothered. He was put in charge of Persephone, the infernal goddess of death, daughter of the Styx and wife of Pluto and mother of the furies, whose reputation lies chiefly in the fact that she was abducted by Pluto and made queen of Hades. His nurses became insane, and the little kid was changed into a ram and brought up in the dark recesses of a cave. When he was grown he became insane and became a hobo. He compelled his female worshippers to leave their homes. In their frenzy mothers mistook their children for animals and tore them in pieces. The people, and particularly mothers, opposed his entrance to many countries. Ships that carried him had their masts and oars changed to serpents and Bacchus changed himself into a lion, and ivy surrounded the ship. The sailors were seized with madness and leaped into the sea. Homer calls him the "drunken god." He was the god of the tragic art. In the beginning of his career the Graces were his companions. Time wrought great changes in his companions, who were Bacchantic women, raging with madness, in vehement motions, their heads thrown backward, with disheveled hair, carrying in their hand cymbals, swords or serpents. Satyrs and centaurs, monstrosities slightly human in face, brutes in body, were his chums. Sacred to him were poisonous shrubbery, and among animals sacred to him were the serpent, tiger, lynx, and panther. The expression of his countenance in art is languid and shows a kind of dreamy longing, his head, with a wreath of vine or ivy leaves, somewhat on one side, his attitude is easy, like that of a man who is absorbed in sweet thoughts or slightly intoxicated. He is often seen leaning on his companions or riding on a panther or ass, tiger, or lion. On coins he is represented with the horns of a ram or a bull. The above forceful description of Bacchus, as given in the poets of Greece and Rome, and taken from the classical dictionary is so easy of interpretation that I will not apply it.

To regulate interstate commerce. What does "regulate" mean? It means to prescribe rules for, and to prescribe rules means primarily to restrict. Unrestricted commerce is not regulated. It is free and unrestrained and has no regulation whatever. The derivation of the word "regulate" is from "rego," which primarily means to keep straight (a very suggestive meaning in connection with this bill). The verb "reign" contains the primary meaning and Webster's first definition is to possess or exercise sovereign power or authority; to exercise government as a king or emperor; to hold supreme power. Webster gives the third meaning to have superior or uncontrolled dominion. The first meaning of regulate in the Century Dictionary is to adjust by rule, method, or established mode, to govern by or subject to certain rules or restrictions. To regulate a machine is to adjust the governor so as to restrict or confine its movements, to increase or lessen the power as occasion demands. To regulate a clock or a watch is to restrict its movements by a pendulum or compensating spring. Our forefathers in making our great Constitution used the word "regulate" in its ordinary use. They never intended to surrender the right of protecting their descendants from the greatest evil known to man. They pledged their fortunes as well as their sacred honor to guard the happiness of the people and not the interests of the saloon and the stillhouse and the lawbreaker. Our forefathers, who made our great Constitution, were great scholars and used words with great accuracy. They used "regulate," in my humble opinion, to mean that the power to restrict interstate commerce was in their hands to be used as the needs of the people required.

You, yourselves, Senators, gave that interpretation to the word when you prohibited the consignment of liquor to the Indian tribes. Later, when the Indian Territory became a part of the sovereign State of Oklahoma, the Supreme Court of the United States decreed that under your law consignments of liquor could not be transported to that part of Oklahoma which was formerly the Indian Territory. Have not we in Tennessee, in our father's house, a right to expect that you do as well for us and our children as you do for others? We simply ask for equal justice. We do not ask you to even help us execute our anti-liquor laws or delegate to us any power we do not possess. We simply ask you "to deprive liquors in-

tended for unlawful purposes of interstate-commerce character, and let us deal with such imported liquors as we would with liquors of domestic production intended for the same unlawful purposes."

Your laws regulate nitroglycerine and its products. That means they restrict—they prescribe conditions. They prohibit entirely from the whole Union absinthe simply because it intoxicates, but another intoxicant is said to have the right of way even over the sovereign power of States and the Nation itself. I have been myself denied by quarantine the privilege of crossing into my own State to my own home because I did not have with me a health certificate, and I had not been in contact with any contagion. Cattle, sheep, horses, hogs, and plants of every description are stopped, regardless of loss to the owners, because of anticipated disease. To regulate, then, is evidently to restrict. It seems that the only commodity known to man that can not be restricted is intoxicating liquors. If disease of animals and plants constitutes the difference, intoxicating liquors are responsible for more diseases of the body than all other causes combined and in addition they send great multitudes to the madhouse, to suicides' graves; they destroy the will power, which alone constitutes true manhood. They undermine love and destroy homes. This great destroyer, the greatest evil known to man, seems to be in the estimation of great lawyers the only disease-breeding commodity that can have no restriction put upon it.

They had trouble in ancient times to regulate this same commodity, personified into Bacchus with such unusual power that he overcame all restraints by changing men that stood in his way into fowls, fish, or animals, according to his whim. Modern sovereignty, it seems to me, works the same trick by changing the meaning of very simple words. Even statesmen and chemists of the United States can't tell what whisky is. In my boyhood whisky had no restriction upon it whatever. It was sold at 10 cents a gallon anywhere—on the public highway, at camp meetings—and any illiterate plowboy could tell what whiskey was. Now that whisky is so disguised with Indian hemp, buckeye, mountain ivy, poison oak, sulphuric acid, chloral, and other poisons, I don't wonder that its definition involves problems too complex for great statesmen and chemists.

While our temperance laws in Tennessee are reasonably enforced in at least 80 per cent of the population and 95 per cent of the area, we are greatly hampered by the action of the Federal Government in protecting under the interstate-commerce law the shipment of liquor. We do not ask the Government to assist us in the enforcement of our temperance laws, but we do ask that when the liquor crosses the State line, that it shall become subject to the laws of our own Commonwealth. We do ask that you leave in our hands consignments of liquor after they come within our boundaries. The State of Tennessee has long passed her majority and is clothed and in her right mind. She thinks she, on the ground, knows her people after more than a century of acquaintance better than the General Government can know them, and asks that her discretion on this great question be supreme. She will be wise in the use of this discretion. She can discriminate between a proper consignment and one that is designed for a lawless purpose.

Mr. President, it is wrong for this great Government, the strongest in the world, to force this Pandora's box on our people.

Tennessee's yeomanry in the days of the Revolution, at King's Mountain, living on parched corn, turned the tide of disaster and made this great Government a possibility. Our incomparable Andrew Jackson, with a Tennessee army at New Orleans in the War of 1812, won imperishable glory for this Nation. In the Civil War, Tennessee furnished a great army on the side of the Union. The Republican Party of our State, largely composed of old Federal soldiers and their descendants, have united hands and hearts with the old Confederate veterans and their descendants, who constitute the very backbone of democracy, in support of this bill, and ask you simply to withdraw your protection from interstate consignments of liquor. We simply ask you not to give your protection to that lawless gang who, armed with your license, nullify the laws of the great State of Tennessee. Andrew Jackson, of Tennessee, twice President of the United States, has some reputation on nullification. When he was your Executive, he did not allow your laws to be nullified. We ask you to-day to pass this Kenyon-Sheppard bill that you, the Senators of the United States may not by your votes nullify the laws of the great Commonwealth of Tennessee, the home of Andrew Jackson.

In reaching the conclusion that it was easier for people to do right without than with saloons Tennesseeans were following illustrious precedents. Many States of this great country preceded them in adopting this policy. North Carolina, her mother, had set the example. Tennesseeans, proud of their ancestry, love to follow where her mother leads.

This body of Senators, the greatest lawgivers in history, with the cooperation of the other House, preceded us. Every refreshment known to man, except intoxicating beverages, can be purchased in this Capitol. You said to the civilized world, by excluding liquor from the Capitol of this great country, it is easier to be efficient legislators without than with intoxicating liquors easily accessible to you.

If you Senators can do your work better without an easily accessible drink stand, how about indiscreet youth and the great masses of the plain laborers of our country? Tennessee congratulates you on this right course in this Capitol and would not force upon you a different policy if she could. Is it not in good form in this Chamber to quote from Him who is the truth, the life, the way of nations as well as individuals, from Him who is the author of all good, and whose precepts lie at the very foundation of all progressive civilization, on whose birth history pivots itself, "Do unto others as ye would that others do unto you"? If mankind could only even approach this ideal, it would solve the most complex problems of modern civilization, both national and individual.

Do not protect by your law of interstate commerce those who violate our laws. It is wrong to force this upon us. We are following your illustrious example, Senators. You taught us the way to make it easier to do right. It is wrong to thrust us back when we are simply walking in your footsteps. To give our State control of consignments of liquor when they cross the State line to within our jurisdiction is no precedent for other consignments of other commodities. You yourselves have set the example of making liquor different from other commodities. You have excluded liquor, and liquor alone, from this great Capitol. This in your estimation set it apart as different from other commodities. Your method of taxation has set it apart as different from all other commodities. The producer of liquor is not permitted by law to control or even have access to his own product except in the presence of your officers. No other product of man has such a brand of distrust upon it and its producer. It is a positive wrong and a positive discourtesy for you by your licenses and your protection of liquor to nullify our laws by your method of regulating interstate commerce.

Your quarantine stations in protecting the people against contagious diseases confine the citizens themselves regardless of their convenience, liberties, or comfort, and exclude them from access to their own homes and loved ones to prevent disease. You are right in this. Liquor kills more people than all wars and pestilences and famines and earthquakes combined. Yet this commodity, more deadly than all diseases combined, has right of way into the heart of a sovereign State in spite of the wishes of its people.

I am greatly gratified to-day that I stand on State rights with the Senators of Kansas. Kansas has made a heroic fight against the greatest evil known to man. Her leadership thrills my soul. I am proud to follow on this, the greatest problem of civilization, where Kansas leads. I have not always stood with Kansas on State rights. I bear on my body scars, but none on my heart, because 50 years ago I differed with Kansas on this great question. It is a happy omen that the bill bears the joint names of Senator KENYON, of Iowa, and Senator SHEPPARD, of Texas—North and South standing together for State rights.

My widowed mother, in sight of the smoke of distilleries, told me on her knee that it was wrong to make and sell liquor. I never went to a teacher from infancy to my graduation in a university who did not teach me it was wrong to handle, touch, or taste liquor. As a soldier boy in my teens I heard the general order of Gen. Robert E. Lee read at dress parade that liquor brought to his army should be in sealed packages, put in charge of the surgeons, and that the seal should not be broken till the wounded were actually on hand. It was a sober army that made him the most famous commander in history and put his statue in Statuary Hall by the side of the Father of His Country. My Father in heaven was good to me to give me such a mother and such teachers and such a commander. I reverence their memory.

I have tried as a father, as a grandfather, as a teacher, as a citizen to transmit this great lesson to those who are to come after me. I am glad to-day, as a Senator of the United States, that I have an opportunity to make a record on this, the greatest problem before the civilized world. I am not a lawyer; I can not meet the legal arguments of those learned lawyers on the other side. I have the greatest respect for their learning and ability; I covet to-day their equipment. I can say, and I do say, that if the Constitution of the United States stands in

the way of this great reform the Constitution ought to be changed.

Pardon me for a personal allusion. I have spent more than 60 years in a boarding school for boys. No man can tell what a little carrot-haired, hatchet-heeled boy will develop into. In my boyhood at the Bingham School at the Oaks, in a remote part of Orange County, N. C., my roommate, a 12-year-old lad, later became the governor of his State. A college friend, Walter Clarke, has been for many years and is now chief justice of North Carolina. God has allowed me to live to see my own little student boys develop into such a splendid manhood as to worthily occupy seats in this Chamber and in the House of Representatives at the other end of this Capitol. Senator Edward Ward Carmack, a former pupil, was an honor to the Senate of the United States. He was a genius and a statesman and a martyr to the cause I represent.

I have seen others of these little boys later on the supreme bench of their State, and many of them learned judges of other courts. I have seen them wearing Episcopal robes and filling great metropolitan pulpits. I have seen them great authors, presidents, deans and professors in great colleges and universities and the headmasters of great schools. I have seen them great lawyers, great surgeons and physicans, great soldiers and manufacturers, and farmers. I have seen many of them in business become millionaires.

To see these boys make this splendid development is the loviest scene that God and angels look down upon. Such development makes happy fathers and makes a bird sing in mothers' hearts.

Oh! I wish I could be spared the contemplation of the other side that makes the devil and his emissaries rejoice and feel that they have come into possession of their very own. I have accompanied them to the madhouse for a living death while still in the flesh. I have accompanied them to suicides' graves, and seen them entangled in divorce suits—all love gone. I have seen them in dishonor in convict garb, their fathers ashamed and their mothers broken hearted, in each case a tragedy infinitely greater than the loss of the *Titanic*, that brought an investigation from this august body and also from the Parliament of England. Liquor did it every time. Having spent my life in the rural districts with the knee-breeches boys about me, I, like other men, dreamed dreams, but I never once dreamed that my name would ever be even considered for this great honor; but among those little boys the question of government may have been unique and not dignified enough to be even mentioned in this Chamber. But my conception of the proper function of government agrees with Gladstone, the prime minister of England and the greatest lawgiver of the last century, that government's proper function is to make it easier for people to do right. Tennessee, in three great contests, has said to you that it is easier for her people to do right without than with saloons. No intoxicating beverage can now be legally sold in Tennessee.

I am an optimist. The world is getting better every day. I saw in my boyhood liquor absolutely without restriction. It is now restricted in a thousand ways; I saw gambling untrammeled and indulged in everywhere, even on the public highway. It has been driven into guarded dens. I saw public betting on horse races—now a thing of the past. Lotteries in my boyhood used the mails. Their agents were everywhere. Dueling was common. A gentleman allowed himself to be punctured by bullets into a pepperbox to show that he was brave and a man of honor. Senators, America is aroused on the liquor question. Anglo-Saxons have won every reform that once caught the ear of the people. Liquor has got to go. God grant that I may help it go.

The world is stirred on this question. Children now live who will have to explain to their children what a saloon was, and why their ancestors tolerated such a deadly evil. But for the money invested in it it would already have been a thing of the past. Toleration of the saloon puts the dollar above the man.

Miss Frances E. Willard, the lovely and charming queen of womanhood, has the great honor of a statue in Statuary Hall in this Capitol. No honor has ever been bestowed more worthily. It was her work for temperance that made this bill a possibility. In her name and in the name of millions of charming white-ribboned women all over this great American Nation; in the name of the white-ribboned hosts of Tennessee, under the leadership of Mrs. Silena Holman, a mother and grandmother of a noble family, who for years, with womanly dignity and charm, has done more than anybody else in cultivating public sentiment in Tennessee in favor of lofty ideals of citizenship, and who, if usefulness to her people is the correct measure of statesmanship, is Tennessee's greatest statesman; in the name of all the fathers and grandfathers and mothers and grandmothers of this great Nation, who wish a clean environment in which to rear their offspring, in whom they have invested their very lives; in the name of all the schoolmasters of America, whose greatest ambition in life is to train a citizenship worthy of this the greatest Nation in history; in the name of all the Christian churches of America, who labor and sacrifice that all the people may have a right attitude to God and to man; in the name of all the boys and girls on whose ideals formed in youth and not on material prosperity, which you have so nobly fostered, the future glory and usefulness of this great Nation depends; in the name of our Father in Heaven, who said that righteousness and not material prosperity exalteth a nation.

When we come to you asking for a fish, do not give us a serpent that stings, that mars, that destroys, whose coil is in the stillhouse. [Applause in the galleries.]

The PRESIDENT pro tempore. If applause in the galleries be repeated the Chair will certainly direct the Sergeant at Arms to clear the galleries. The Chair hopes that the occupants of the galleries will consider that this notice is given in the utmost good faith and sincerity, and that this offense against the rules of the Senate will not be repeated.

Mr. GALLINGER. Mr. President, after listening to the eloquent speech of a new Senator I am moved to make a request, which is that by unanimous consent the rules of the Senate be so far suspended that the Senate may substitute for consideration the bill on the same subject passed by the House of Representatives for the bill now under consideration.

Mr. MARTINE of New Jersey. I object.

The PRESIDENT pro tempore. The Senator from New Jersey objects.

Mr. ROOT. Mr. President, I have been urged by a great many people, whom I respect very much, to vote for this bill. I can not vote for it, however, because I have come to a perfectly clear and definite conclusion in my own mind that the bill is not within the constitutional power of Congress, and with that opinion I can not with self-respect vote for the bill; I can not vote for it consistently with the obligation that I have taken to maintain the Constitution.

Nowadays, sir, when I say that a measure which is popular and which many of our citizens desire is unconstitutional I feel as if I were doing an injury to an old friend and subjecting that friend to obloquy, to censure, and to possible disaster; but, sir, it is only by observance of the rules of the Constitution that we can maintain the government of law as against that government of men which means the destruction of individual liberty. The maintenance of the government of law, the observance of declared principles and rules of action, is far more important than the fate of any bill regarding any specific subject that can be submitted to Congress; and, sir, I can not reconcile it with my idea of what is wise for the country and what is right for a representative in the Senate to cast a vote for a measure which seems to me to be unconstitutional in order to throw upon the courts the burden of declaring it to be unconstitutional. I believe, sir, that the effect of passing this bill—and I understand that it probably will pass—will be that the courts of the United States will have to say that it is beyond the constitutional power of Congress. I think they will have to say that or stultify themselves, and when they say that they will concentrate upon themselves a measure of unpopularity, of public censure, and of public impatience with the judicial establishment which we will have shifted from our shoulders when we vote for the bill believing it to be unconstitutional. I think I shall be the better satisfied to take that burden on my own shoulders, and therefore I shall vote against the bill, because I think it is not permitted by the Constitution.

The bill has two sections. The last one is a simple and direct section which provides that all intoxicating liquors upon arriving within the boundaries of a State shall be subject to the police laws of the State. I think the friends of the bill have practically conceded that that is not constitutional. I think they are right. I do not see how they can avoid that conclusion. Still, in my judgment, it is much the least objectionable of the two sections of the bill.

The other section provides that the shipment or transportation in any manner or by any means of any intoxicating liquor into any State, whether from a foreign country or from any other State, is prohibited if the intoxicating liquor—

is intended, by any person interested therein, directly or indirectly, or in any manner connected with the transaction, to be received, possessed, or kept, or in any manner used, either in the original package or otherwise, in violation of any law of such State, Territory, or District of the United States, * * * enacted in the exercise of the police powers of such State—

And so on.

Mr. President, that provision seems to me to be open to a number of objections, which I shall proceed to state.

In the first place, it undertakes to charge the citizens of every State and the citizens of all foreign countries engaged in com-

merce with the United States with a knowledge of all the laws of every other State. I doubt whether we can, by law, charge a citizen of the State of Louisiana with knowledge of the laws of the State of New York. If the effect is not, as a matter of law, to charge that knowledge upon the citizens of each State, then it is to require what is impossible, that the citizens of each State shall become familiar with all the laws and all the facts upon which laws operate and receive effect in all the other States. If they do not know all the laws and do not know all the facts upon which those laws operate, such as the issue of licenses, the fulfillment of conditions, and so on, then they are penalized for their ignorance by having their contracts prohibited.

In the second place, the provision undertakes to invalidate the contracts of the people of each State by reason of the intention of some one else in regard to future conduct under the laws of other States. The laws of a given State require a common carrier to accept and carry an invoice of goods. The contract is obligatory. The contract is made. But under this provision, if it is effective at all, the contract is invalidated because some one besides the carrier, and it may be some one besides the shipper, has an undisclosed intention to violate, after the transaction of transportation is over, an unknown law in a different State. I do not think it is competent for us to invalidate contracts in that way.

I can not quite agree with the proposition that this law means nothing because it carries no penalty. I think the law, if it be effective, makes contracts made under it invalid and unenforceable. That is the general rule of law—that a contract made in violation of law is an illegal contract, an invalid contract, outlawed, and incapable of compulsion or of being made the basis of remedy in the courts. That rule of law is maintained as strictly and as clearly by the Supreme Court of the United States as it is in any jurisdiction.

A third objection to this provision is that it is simply and plainly a surrender on the part of the General Government of the power of regulating this interstate commerce and a delegation of that power to the government of the State in which the transaction ends.

The Supreme Court has described the origin and the operation of this rule by which the Government of the United States is to regulate interstate commerce as being a regulation by the Federal Government of a transaction which can not be regulated by the States because the transaction is in part within the jurisdiction of one State and in part within the jurisdiction of another State; and this rule, around which our Union has been built up, was established to prevent the conflict of rules in the State where the transaction begins with rules in the State where the transaction ends.

Sir, I say that the provisions of this first section abandon that rule and vest in the State in which the transaction is to end the power to regulate and control the transaction. It is not letting go of the transaction and leaving it subject to the police power of the State. It is letting go of the regulation of that commerce and putting it in the hands of the government of the State where the transaction ends.

There would be a different situation, sir, if we were undertaking to legislate about a known law of a State; if we were undertaking to say that goods transported into the State of Michigan in violation of a certain named law of Michigan should be subject to the penalties of that law. That is not what we do here, however. We make all transportation of this article of commerce subject to whatever laws may be hereafter passed by any State. And what is that, sir? Some States undertake to regulate the traffic in liquors by means of high licenses and make it illegal to sell without a license. Some undertake to regulate it by local option and make it legal to sell in one place and illegal to sell in another. Some prescribe the purposes for which the sale may be made and prescribe conditions of receiving certificates or evidences of authority to sell or to buy for the particular purposes. There is a great variety of provisions declaring when and how and under what circumstances and upon what conditions this traffic, the possession, the transportation, the sale, and the use of these articles shall be lawful.

The effect of this provision, if it takes effect at all, is that each State shall be empowered to say when and how and under what circumstances and upon what conditions this liquor may be transported into the territory of the State. The States can do that, because they can say that under any other conditions it shall be unlawful. Under this, sir, a State may by law permit the manufacture of distilled spirits within its territory and by law make it unlawful to have in possession distilled spirits manufactured out of its territory. There is no limit upon the regulation by every State of this kind of interstate traffic under the authority conferred by this bill. It is not giving up the regulation and allowing police law to take its place. It is handing over the power of regulation to the State into which the transportation goes.

Mr. President, one great trouble about this whole subject is that the States themselves have been unwilling to outlaw these commodities. We should have a much simpler situation if there were a State which made it unlawful to manufacture or sell or have in possession or use intoxicating liquors. That State, so far as it was within its power, would have declared that intoxicating liquors were not the subject of commerce. But so long as a State permits them to be manufactured in some way and in some places, to be sold in some way and in some places, to be held in possession for some purposes, to be used for some purposes, so long it still regards these commodities as the subjects of commerce.

What is proposed in this bill is that the Government of the United States shall hand over to the government of each State the right to say how and when and under what conditions interstate commerce in these articles of commerce, so treated and regarded by all the States, shall be had.

There is another objection, sir. That is, that this bill does not merely hand over to the State which is the terminus ad quem of this transportation the power to regulate interstate commerce within its borders, but it undertakes by Federal law to enforce in each State the laws of the other States. I beg Senators to observe the real significance of that. Let us say that the State of Iowa, which has stringent laws, is empowered by this statute, if it is passed, to declare the circumstances under which beer may be imported from St. Louis, in the State of Missouri. If the beer is carried in in accordance with the laws of the State of Iowa, it is a good transaction. If it is carried in in violation of those laws, with intent to sell without a license, with intent to sell in a "dry" town rather than a "wet" town, with intent to sell for one purpose rather than another, then it is a bad transaction, and the contract made in the State of Missouri is a void contract, made void by the law of Iowa.

So, sir, we are not merely delegating to the legislature of a State the power to regulate interstate commerce within its borders, which the Constitution prohibits to the legislatures of the States and vests in Congress, we are not merely abdicating our authority and refusing the performance of our duty to say when and how and in what manner this thing shall be done, but we are undertaking by Federal law to enforce in the State of Missouri the laws of the State of Iowa, by putting upon those laws, whatever they may be, whenever they may be enacted, the imprimatur of Federal authority, and we are stretching out the arm of Federal power over the State of Missouri, to say that no matter what laws she may make, if they are in contradiction of the laws of the State of Iowa, they are void and ineffective.

Sir, I should be very glad if there were some way in accordance with the Constitution in which we could help stop this traffic. Public opinion upon the subject has grown very rapidly within recent years. The time may come, and I shall be glad to see it, when the people of the United States will be ready to act as a whole in the suppression of this traffic. But until they are ready, until this process of education and enlightenment which has been going on in these past years in regard to this kind of traffic has come to the point where the people of the United States, whom we represent and who made the Constitution that governs us, are ready to act as a whole, we are bound to maintain the provisions of that Constitution and to perform the duties it has imposed upon us; and the people of every State are bound, in loyalty to their country, to do the best they can to enforce their own laws in subordination to the directions of that Constitution.

If I may say one thing more, sir, the real trouble in the enforcement of these laws comes from the fact that they do not prohibit this traffic. If they did, it would be easy to enforce them. It is because they make discriminations and allow the traffic to be legal here though illegal there, to be legal in this way though illegal in that way, to be legal upon one condition though illegal upon another, because when a man has liquor in his possession he is entitled to the presumption under the laws of the State that he is going to use it lawfully, that it is so difficult to enforce these laws. Instead of impressing the prohibition upon the traffic in general, everywhere and under all circumstances in the State, they are seeking to transfer the difficulty of making the discrimination and of enforcing discriminating and partial laws from the officers within the State to the people of other States through the prohibition of our statutes.

Mr. STONE obtained the floor.

Mr. BORAH. I should like to ask the Senator from New York a question before he sits down.

The PRESIDENT pro tempore. Does the Senator from Missouri yield for that purpose?

Mr. STONE. I do; for that purpose.

Mr. BORAH. I wanted to have the opinion of the Senator from New York as to whether or not it is within the power of Congress, should Congress see fit to do it, to absolutely prohibit the shipment of liquor in interstate commerce?

Mr. ROOT. Mr. President, my impression is that it is within that power; but, of course, it is a subject which is not up for discussion, and upon which examination might well change my views. I have not examined the subject. It is but the general impression that a lawyer carries on a subject that he has not examined with special reference to the particular question. My impression is that it would be competent for the United States to do that thing.

Mr. BORAH. Just one more question. If it is within the power of Congress to absolutely prohibit the shipment of liquor in interstate commerce, is it not also within the power of Congress to prohibit the shipment of any part of that commodity which it may designate as a particular class?

Mr. ROOT. Not necessarily, Mr. President.

Mr. BORAH. Does not the whole include the part?

Mr. ROOT. Oh, yes; but the reason why I think Congress could prohibit the traffic in alcoholic spirits is the injurious effect upon the people of the country, the same reason that operates upon the States in enacting their prohibition laws; and that reason is a reason that must be followed. You can not say that Distiller A may have his product treated as part of interstate commerce and Distiller B may not have his product treated as part of interstate commerce. You must follow the reason; and you can not hand over to the legislature of a State the power to say what part may be admitted to interstate commerce and what part may be excluded.

Mr. BORAH. I agree with that proposition; but those of us who believe that Congress is not handing it over to the State, who believe that Congress has identified a particular class of that commerce and is itself excluding it from commerce, have no trouble in arriving at the conclusion that if you may exclude the whole you may exclude a part of the whole.

For instance, if the Senator from Missouri will yield just a moment further, in Kentucky a law was passed "to regulate the carrying, moving, delivering, transferring, or distribution of intoxicating liquors in local-option districts." That law prohibited its transportation entirely. The Supreme Court said:

> Valid as the Kentucky legislation undoubtedly was as a regulation in respect to intrastate shipments of such articles, it was most obviously never an effective enactment in so far as it undertook to regulate interstate shipments to dry points.

If a State may absolutely prohibit the shipment of all liquor and all commerce in liquor, may not the Congress of the United States, having the same power with reference to interstate commerce, its power being equally plenary, prohibit the shipment of all liquor in interstate commerce? Has the State any power over liquor in intrastate shipment that Congress has not over interstate liquor?

Mr. ROOT. I think it may. Yes; I think it may. I have already answered the question of the Senator. I have said that it is my impression that the Government of the United States would have the power to exclude all intoxicating liquors from interstate commerce. I do not think, however, that it can exclude intoxicating liquors from interstate commerce between two particular States. I do not think it can say that the State of Idaho can exclude intoxicating liquors from interstate commerce beween Idaho and another State. I think Congress itself must make the rule. The question whether the United States can exclude all intoxicating liquors from interstate commerce must depend upon the question whether intoxicating liquors are to be classified with flour, vegetables, wheat, the things which are necessary or useful to life, or whether they can be classified among the substances that are so injurious that they can be treated like putrid meat, injurious to health or dangerous to life.

If they are to be classified on that side, then they must be excluded, but they must be all excluded. You can not take a halfway step. You must declare them to be injurious to health and dangerous to life, or that in substance, so that they will be excluded as a whole. You can not exclude half and let in another half, because then you lose the reason in which you are justified in any exclusion.

Mr. BORAH. I will not delay the Senator from Missouri further.

Mr. STONE. Mr. President, I want about 15 minutes of the time of the Senate to say what I have to say respecting the pending bill. I do not wish to occupy more time than that, because I doubt whether it is in the best good taste, under the circumstances, on an occasion like this, when only three or four hours are provided for under the order of the Senate for any Senator to occupy a half or a third of that time. I believe other Senators should be given a chance briefly to state their views and to offer amendments and have them considered. I think it is a practice much abused for Senators, when an order such as this is made, with only a short period for them to speak, to defer their opportunity, which might have been taken advantage of on almost any day of many days previously, and to exploit their views at great length when the order is operating. I shall take but a few moments of the time of the Senate, out of deference to this view which I have expressed.

Mr. President, whenever a State determines to deal in a restrictive way with what is called the "liquor traffic" there are ordinarily two principal ways of treating the subject. One of these ways is to prohibit the manufacture and sale of intoxicating liquors in the State as a whole, or it may be to authorize municipalities within the State, such as counties or cities, to prohibit the sale of liquors within municipal limits whenever the people of any such muncipality shall, in accordance with law, determine upon that policy; this latter plan is commonly known as "local option."

The other usual way of dealing with this question is to regulate the traffic by statute instead of prohibiting it. Ordinarily when this plan is resorted to the statute provides for licensing those who engage as retailers in the business, prescribing the form of the licenses and the terms upon which they may be allowed, and fixing penalties for violations of the law.

Generally speaking, I have always believed that the liquor traffic could be best controlled and the best results obtained, especially in populous centers, by imposing license taxes upon those authorized to engage in the business, and to subject the business to statutory and police regulations. I have in my State always and consistently opposed the policy of State-wide prohibition, believing that it would be practically impossible to effectively enforce a prohibitory law in communities, especially in large communities, when in fact the dominant, all-prevailing sentiment was hostile to that policy. I have always believed that any attempt to force a policy of that kind on an unwilling people would be received sullenly and resentfully, and that it would lead to constant violations of the law, either covertly or openly. I have felt that such a situation was calculated to bring disrespect of law and public authority, and that it would lead to more or less public disorder. Hence, I say, I have always maintained, and still believe, that State-wide prohibition, especially in populous States like Missouri, would not be a wise policy for the State to adopt—less wise and less effective than a well-ordered regulatory system. At the same time I have for years consistently supported the policy of so-called local option—that is, the right of each local community or municipality to choose for itself whether it would have prohibition or a regulated licensed system within its borders. I have felt that the policy to be established in each municipal community, whether the one policy or the other, should be buttressed alone upon the expressed will and well-considered public sentiment of the community immediately affected, and not upon the will or public opinion of some other community. I have seen nothing in the course of my observation and experience to shake my faith in the soundness of these views.

In 1910, about three years ago, a constitutional amendment was pending before the voters of my State establishing absolute prohibition as the policy of the State, and State wide in its operation and effect. I opposed the adoption of that amendment. In published interviews and in public speeches I declared my belief that it would be unwise for more reasons than one to incorporate the proposed amendment in the constitution of the State. The amendment was defeated by a large majority. In my addresses to the people during that campaign I said, among other things, that I did not believe that the people residing in a so-called "dry" county should undertake, or be authorized by law to attempt, to impose their standard of morality or habit with respect to the use of wines and liquors upon the people of another county where a totally different public sentiment on that subject prevailed; and that equally would I suppose the right, or claim of right, of people residing in a so-called "wet" county imposing their standard upon the people of some other county having a totally different view and desiring a totally different policy. I contended that all this should be left to the people of each separate municipality, and that that would be infinitely better in every way than the plan proposed by the then pending constitutional amendment. During that campaign I conversed with scores of Missouri electors, living in dry counties, who told me that in the main

they concurred in my view of the subject. They said that in their own counties they were, for various reasons, strenuously opposed to licensing or authorizing by law the carrying on of a liquor-selling business, but that if the people in other counties or sections held a different view they were willing for that people to settle that question for themselves. Undoubtedly that was the attitude of large numbers of men who voted against the adoption of the constitutional amendment for State-wide prohibition.

Now, Mr. President, I am receiving numerous letters from gentlemen for whom I have high respect, scattered over my State, reminding me of the position I took in the prohibition campaign of 1910, and with which they sympathized, asking me whether under my view of this whole subject, as often expressed, I did not think that I ought to support the bill now before the Senate. Frankly, I think I ought to support it, and I intend to vote for it.

Under the law as it now stands a State has the power to regulate the liquor traffic when it is carried on wholly within the State. For example, a State can by law forbid the shipment of liquors intended for sale from a point within the State to another point within the State which would be within so-called "dry" territory, and the State can, within this limitation, prescribe such penalties and devise such remedies as may be deemed necessary to punish or prevent a violation of the law. The State can control the business as long as the business is confined wholly to the State. But under the Federal law a citizen of one State may ship liquors into another State, and the consignment can not be interfered with by State authority while in transit nor until it is actually delivered into the possession of the consignee at the point of destination, and this even though the point of destination may be within dry territory. In other words, the State could, if it desired, forbid a liquor merchant in St. Louis, Mo., shipping a package of intoxicating liquors intended for sale to a dry county in that State; but a citizen of East St. Louis, Ill., could ship the same consignment to the same person at the same place without incurring the penalties of the Missouri statute and without fear of having the cargo interrupted or interfered with until it had been actually delivered to the consignee.

This would give to the outside shipper an advantage over the inside shipper, and at the same time would put the people and authorities of the dry county at a disadvantage in dealing with the outside shipper that they would not be subject to in dealing with the inside shipper. It seems to me to be both fair and right that whenever the people of a county of my State, upon mature deliberation, adopt the policy of local option they are as much entitled to protection against men outside of Missouri who have no respect for the law or public policy governing the community, as they are entitled to be protected against men living within the State who might wantonly intrude themselves and trample the law under their feet.

I think Congress has the constitutional right to so amend laws governing interstate commerce as to put intoxicating liquors outside the pale of that protection now thrown about them by Federal law, and thus subject them, upon arrival, to the law of the State to which they are shipped for unlawful use. Aside from my conviction that Congress has this constitutional right, I feel that the moral strength of the argument is in favor of the enactment of such legislation.

The pending bill, if enacted, would not be a criminal statute; it would not create a crime nor prescribe a penalty. It would not even forbid a shipment from one State into another. It would in effect merely strip these particular commodities of their character as articles of interstate commerce, and thus withdraw from them the protection the Federal law now throws over them against the law and police regulations of the State. It would merely put the shipper outside of Missouri or Iowa or Arkansas upon a level, that is upon terms of equality, so far as State law and regulation go, with the shipper within the State. I confess I am unable to see that any essential principle of sound constitutional law or any just claim of public or private right would be violated by the enactment of a statute of this character.

Such a law would not be violative of the Federal Constitution, but it would better enable the State to enforce its own internal policy, and thus at the same time promote that comity that ought in such cases and within proper limits to prevail between the States and the General Government.

It is a settled doctrine now that each State, acting in its sovereign capacity, can, generally speaking, establish its own internal policy with respect to the manufacture and sale of intoxicants, and I can see no good reason, founded either in morals or public or private right, why the Federal Government should enact or perpetuate laws that militate against the assertion of the established public policy of the local sovereignty. With respect to prohibition I have never believed in the wisdom of a policy too extreme or drastic.

I have already said I have opposed State-wide prohibition in Missouri; but also I have favored local option. Mr. President, the liquor traffic has been brought into disrepute by abuse. Doggeries, joints, bootleggers—men who run their business without regard to public decency or public opinion—are the men who arouse, and justly arouse, a sentiment against the whole traffic that leads on to absolute prohibition. Men even of broad-minded and liberal views, who believe in the largest personal liberty consistent with public decency and order, halt when they see shameful things, and they will not tolerate situations that the moral sense of mankind condemn as bad and indefensible. Men engaged in the liquor traffic should themselves purge the business of disreputable establishments and practices, and should themselves have high regard for the law and public opinion. Otherwise they need not be surprised to see public sentiment against the business grow and spread in every direction. Personally I believe in the largest measure of liberty in personal habit and conduct consonant with public order; but that, Mr. President, is about the limit of personal liberty.

License to do something according to law does not confer liberty upon the licensee to do something else in violation of law. I am a strenuous advocate of personal liberty. I do not like the idea of any other man or set of men telling me what I shall drink or eat or wear or think. With respect to all these I not only prefer but I insist upon the right to follow my own judgment. This is fundamental. I resent any pretense of right put forward by any other man to regulate my personal habits so long as my habits are decent, orderly, and lawful. If one man does not desire wine at his table or to indulge in a social drink, that is his privilege. I would not dare to question the wisdom of what he does in this behalf for his own guidance. On the contrary, I would say he ought best to know his own limitations and what is good for himself; and in any event I would insist that he should be left free to determine all such questions for himself. But if another prefers to serve wine at his board or to indulge in a social libation, I am equally unwilling that any spirit or policy of intolerance should circumscribe his right.

Generally speaking, I believe in a broad view of this question, and in liberality of conduct and opinion with respect to it. Nevertheless the regulation of the liquor traffic is inevitable and necessary. How it shall be regulated is a question each State should determine for itself, and I think the Federal Government, instead of putting any serious obstacle in the way, should cooperate with the State in this behalf. With respect to this matter I have nothing to do with the local policy of other States; but with respect to Missouri, being long a citizen of that Commonwealth, I have not only an immediate interest in the subject but I have a right to express to my fellow citizens the opinions I hold as to what will best promote the general welfare of that great sovereignty. The people of Missouri may or may not follow my advice, and the people of your several States may or may not follow your advice, but when the people of our several States speak we should all of us accept the verdict. Salus populi suprema lex esto is the motto of my State.

Mr. President, with this I close what I have to say on this subject. In many of its aspects it is a most interesting subject of more or less wide import, and it would require more time than I have taken to elaborate it if I felt disposed to enter upon the discussion with the idea of amplifying it at length. However, I am satisfied to state within the briefest possible compass, as I have attempted to do, some of the reasons that influence my judgment and will determine my course in supporting this measure, and leave it at that.

Mr. GALLINGER obtained the floor.

Mr. SHEPPARD. Mr. President——

The PRESIDING OFFICER (Mr. BRANDEGEE in the chair). Does the Senator from New Hampshire yield to the Senator from Texas?

Mr. GALLINGER. I yield to the Senator from Texas.

Mr. SHEPPARD. I want to renew the request that the rules be so far suspended that House bill 17593 be substituted for the pending bill.

Mr. MARTINE of New Jersey. I object.

The PRESIDING OFFICER. Objection is made.

Mr. GALLINGER. Mr. President, the State that I in part represent had on its statute books for a great many years a prohibition law, but, through the influence and active work of the liquor interests of New Hampshire, that law was repealed a few years ago, and a local-option law took its place. Under that local-option law it was a question for the people of the several cities and towns to determine for themselves by a vote

at stated times whether or not liquor should be permitted under license to be sold in those municipalities. A very large proportion of the State voted against licensing the traffic, when immediately the cities and towns that voted in favor of license flooded the nonlicense towns with liquor to an extent that became a scandal. The result was that the New Hampshire Legislature, at its earliest opportunity, passed a law preventing the sending of liquor into those no-license communities.

The action of New Hampshire in that particular is very similar to what is proposed in this bill; that is to say, this bill proposes that the States that prohibit the selling of liquor shall not be invaded by the States that do not prohibit it and which, for gain, send liquor into prohibition territory.

Mr. President, I am not even going to suggest whether or not this bill is constitutional, because I am not a constitutional lawyer; but a very distinguished member of the legal profession has made a suggestion to me that impressed me, and I want to put it in the form of an interrogatory to the Senator from Utah [Mr. SUTHERLAND], who is recognized as one of the best lawyers in this body. It is this: Is it not a fact that the power of Congress to regulate interstate commerce carries with it the power to define what shall constitute an interstate transaction and at what point the transaction ceases to be interstate? I ask that question.

Mr. SUTHERLAND. No, Mr. President; as the question is put, I will say not. Will the Senator let me have the paper from which he is reading?

Mr. GALLINGER. Certainly.

Mr. SUTHERLAND. The latter part of the question is "at what point the transaction ceases to be interstate"? Congress can not declare a thing to be not interstate which is interstate any more than it can declare that a white man is a black man.

Mr. GALLINGER. The question refers to interstate commerce. The word "commerce" was left out.

Mr. SUTHERLAND. Well, "interstate commerce." It amounts to the same thing.

Mr. GALLINGER. Will the Senator answer directly the question? That is all I desire the Senator to do. I will read the question again:

> Is it not a fact that the power of Congress to regulate interstate commerce carries with it the power to define what shall constitute an interstate transaction and at what point the transaction ceases to be interstate commerce?

Mr. SUTHERLAND. Within limits, perhaps, yes, Mr. President; but if I were to give a categorical answer to the question I should say no, because what constitutes an interstate transaction is to be determined by the nature of the transaction itself. As I have already said, Congress can not say that a white man is a black man, when he obviously is not; and interstate transportation, of its own nature, begins when the article is delivered to the carrier and ends when the carrier has delivered it to the consignee.

Mr. GALLINGER. Well, Mr. President, I think the Senator from Utah will be somewhat troubled to sustain that position in view of our legislation in the pure-food law. I called the Senator's attention a little while ago to the fact that, under the pure-food law, we did prohibit interstate commerce in certain articles, and the Senator said, "Yes; impure articles," and cited tainted meats as an illustration, but the law goes much further than that, and I want to read one section of it:

> SEC. 10. That any article of food, drug, or liquor that is adulterated or misbranded within the meaning of this act, and is being transported from one State, Territory, District, or insular possession to another for sale, or, having been transported, remains unloaded, unsold, or in original unbroken packages, or if it be sold or offered for sale in the District of Columbia or the Territories, or insular possessions of the United States, or if it be imported from a foreign country for sale, or if it is intended for export to a foreign country, shall be liable to be proceeded against in any district court of the United States within the district where the same is found, and seized for confiscation by a process of libel for condemnation. And if such article is condemned as being adulterated or misbranded, or of a poisonous or deleterious character, within the meaning of this act, the same shall be disposed of by destruction or sale, as the said court may direct, and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States.

Mr. President, that applies to drugs which are defined to be below the standard as established by the Pharmacopœia of the United States and other well-known medical publications; it applies to the misbranding or the adulteration of certain articles, so that we halt those under the pure-food law, confiscate them, condemn them, and sell them. Now, I want to ask the Senator if that section does not contravene the claim that the moment an article enters into interstate commerce it can not be arrested and disposed of according to the law of the State, thus balking interstate commerce to that extent?

Mr. SUTHERLAND. Mr. President, I have made no such claim and no such suggestion. What I have said is that we, under the same law, might stop the transportation of intoxicating liquors if they are misbranded or if they are impure; but it is based upon the proposition that they are impure and upon the proposition that they are misbranded, as the law says, and when they are misbranded that constitutes an attempt to perpetrate a fraud upon the people to whom they are to be transported; and the courts have recognized that distinction.

Mr. GALLINGER. Mr. President——

Mr. POINDEXTER. I should like to ask the Senator from Utah merely one question.

Mr. GALLINGER. I have but a few moments' time, but I yield for a question.

Mr. POINDEXTER. I understand the Senator from Utah—I am not personally clear as to the position he takes in that regard—to contend that Congress would not have the power to prohibit interstate shipments of intoxicating liquors unless they were misbranded.

Mr. SUTHERLAND. No. Mr. President——

Mr. POINDEXTER. In other words, does the Senator contend that Congress has not the power to prohibit the shipping of intoxicating liquors simply as such?

Mr. SUTHERLAND. Mr. President, I undertook in the course of my remarks to state exactly what my position about that was. In the first place, I undertook to show that that question was not involved in this case. I further undertook to show that I had no doubt, whenever liquors should be substantially outlawed by the people of the United States, that Congress then could forbid their transportation; but I had some doubt as to the power until that had been done, and particularly so long as it continued by its other laws to recognize liquors as legitimate articles of commerce.

Mr. POINDEXTER. I think it is involved in the bill.

Mr. GALLINGER. Mr. President, I am to occupy but a few minutes, and I will hasten, so as to give way to other friends of the bill. I have no doubt in my own mind that Congress in its plenary power can declare intoxicating liquors detrimental to the public health and public morals and can keep that commodity out of interstate commerce for that reason.

The Senator from Utah, Mr. President, in his very eloquent address compared the Constitution to a flaming sword which turned in all directions to protect the tree of life. Mr. President, it seems to me we are invoking the Constitution of the United States to-day to perform the functions of a flaming sword turning in all directions to protect the most destructive, the most disastrous, and the most terrible curse of our age and civilization; and it is worth while for us to take a little risk about this matter; it is worth while for us, even though there is a difference of opinion as to the constitutionality of this proposed law, to test it in the courts, if necessary, so as to have the matter settled once and for all. If there is any ground for believing that the law is unconstitutional, the liquor interests of this country, who are strong, wealthy, resourceful, and arrogant, will see that it goes to the courts for determination. There is no doubt about that. They will see to it that the Constitution shall not be violated at their expense, and no effort on their part will be withheld to have this law declared unconstitutional; but if, perchance, Mr. President, it shall prove to be a constitutional law, I submit to the Senate and to the country that the work we shall do to-day in passing the bill will have been work well performed, and the Senate will deserve the gratitude and applause of such of our people as believe that the liquor interests ought to be restricted in every possible, legal, and constitutional manner.

I have asked twice to-day, Mr. President, to have the bill that passed the House of Representatives on Saturday last—a bill similar in its general terms to the bill under consideration—acted upon at the present time. Unfortunately, under the rules of the Senate, that can not be done to-day except by unanimous consent. The junior Senator from Texas [Mr. SHEPPARD] has made a similar request, and in each instance objection has been made. So there is nothing left for us to do to-day but to pass a Senate bill and submit that for the consideration and the judgment of the other House of Congress.

I am of opinion at the present moment that when the vote comes upon the bill which is now under consideration I shall offer the bill that has come from the House of Representatives as a substitute for the Senate bill. If I do so, I shall do it in the hope and the belief that it will more likely become a law than if we send the Senate bill to the House as a separate and independent measure, couched in different language from that which is employed in the House bill.

Mr. President, I do not know how far the Constitution of the United States may prevent the individual State from being protected from interstate business in the carriage of intoxicating liquors, but I want to make one suggestion, and then I am done.

Suppose 47 States of the American Union adopted prohibition laws and the great State of New York alone remained anti-prohibition. Is it conceivable that those 47 States would allow the State of New York to dot its valleys and its hills with breweries and distilleries and send broadcast into the 47 other States a commodity that had been outlawed by those 47 States? I apprehend that if that situation ever could be brought about the people of the United States would find a speedy way to protect themselves from the sale and use of intoxicating drinks that had been brought into their communities from the one State that had refused to adopt the laws that the 47 other States had enacted.

So I say to-day that if any State in the American Union, representing the majority sentiment of the people of that State, sees fit to legislate outlawing the liquor traffic, it has a right to demand that it be protected by the Constitution and the laws of the United States from having that law nullified by the interstate transportation of liquor from other States into that community; and I shall esteem it one of the special privileges that has come to me as a Member of this great body to vote to protect those communities against what I deem, and what they deem, to be a great wrong, against which they ought to be protected.

I trust and I believe, Mr. President, that this great body, always desirous of promoting the best interests of the people of our country, will to-day register its verdict in a manner that will be fully understood and that will not be liable to misinterpretation—a verdict in favor of restraining this disastrous and demoralizing traffic in intoxicants to the least possible limits.

I have reason to believe, and I rejoice in the fact, that the verdict of the Senate will be such as to bring joy and happiness to thousands and thousands of homes and to millions of people in all parts of our country, many of whom are to-day in trial, tribulation, and sorrow because of the evils and the disastrous results of the sale and use of intoxicating liquor.

Mr. BORAH. Mr. President, manifestly at this late hour it is impossible to discuss the bill before us at length. I am going, therefore, to confine myself to very general statements. While this is not a desirable way to discuss constitutional questions, I am compelled through want of time to do so.

My object in the first place was to discuss principally the second section of the bill. I do not believe the second section of the bill is constitutional. I believe it establishes a different rule and involves a different principle from that which is involved in the first section, and it was my purpose to state why I entertain that view. I shall not do so, however, in view of the fact that I understand the parties in charge of the bill are going to offer as a substitute for this bill the one that passed the house known as the Webb bill, and which is in effect the first section of this bill.

Assuming that probably the substitute will prevail, I am not going to take time to state why it seems to me the second section is inhibited by the provisions of the Constitution. I could not and shall not vote for this section in any event—entertaining the view which I do as to its unconstitutionality, But I want to say, while I am on my feet, just a word in regard to the first section, and why I think in a general way it is not subject to the inhibition of the Constitution. It may not be and perhaps it is not wholly free from doubt, but I think the doubt should be resolved in favor of the bill in view of the fact that it promotes wholesome legislation. In fact if it were not for certain decisions of the Supreme Court I might have arrived at a conclusion that it would also be unconstitutional. But in view of those decisions I feel constrained to resolve any doubt I entertain in favor of the bill.

This section provides:

That the shipment or transportation in any manner or by any means whatsoever of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, including beer, ale, or wine, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended, by any person interested therein, directly or indirectly, or in any manner connected with the transaction, to be received, possessed, or kept, or in any manner used, either in the original package or otherwise, in violation of any law of such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, enacted in the exercise of the police powers of such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, is hereby prohibited.

As I view it, Mr. President, Congress sees fit by this act to take a certain commodity, impressed with a certain quality or condition, and put it in a class by itself, and itself fix absolutely the rule for the carrying of that commodity or for its prohibition.

In my opinion, Congress has the power to say that no liquor shall be shipped or passed through the chanels of interstate trade if Congress sees fit to do so. I do not agree with the proposition that it is necessary to see how high public opinion shall rise in order that we may exercise that power or that our possession of it is dependent upon that fact.

I understood the Senator from Utah [Mr. SUTHERLAND] to say that if the time should come when the people almost universally came to the conclusion that this ought to be done, we would then have the power to prohibit the shipment of liquor in interstate trade. I do not think I am mistaken about what he said. In my opinion, that would have nothing to do with the power of Congress to pass the law; neither would it extend, amplify, or limit the provision of the Constitution itself. If we have the power under the Constitution it is because of the provisions of the Constitution and not because of public opinion.

If, for any reason, substantial and basic, Congress concludes that any article of commerce in its shipment through channels of interstate trade is inimical to the public interests, Congress may prohibit its shipment. If it is an article or commodity which can fairly be said to be injurious to public morals to the welfare of society, Congress may take it out of the channels of interstate trade. It occurs to me that that proposition has been pretty well settled; and instead of relying upon original argument, I want to cite, as I can only have time to cite, a few extracts from one opinion.

In the Lottery case it was said, referring to the decisions which were there reviewed:

They also show that the power to regulate commerce among the several States is vested in Congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States.

Further on they say:

If lottery traffic, carried on through interstate commerce, is a matter of which Congress may take cognizance and over which its power may be exerted, can it be possible that it must tolerate the traffic and simply regulate the manner in which it may be carried on? Or may not Congress, for the protection of the people of all the States and under the power to regulate interstate commerce, devise such means, within the scope of the Constitution and not prohibited by it, as will drive that traffic out of commerce among the States?

If Congress comes to the conclusion that the shipment of liquor in interstate commerce, to be used in violation of the laws of the State, is inimical to the morals and the interests of the people of the United States, may not Congress take that particular class of commodities and inhibit its transportation in interstate commerce? May not Congress take into consideration in establishing a rule that the commodity is on its errand of law violation? May not Congress say, and with substantial reason say, we think any commodity which is being used in violation of law ought not to pass through the channels of interstate trade? Congress does not have to say that, but in determining the immoral and injurious effect of shipping a commodity, may not Congress take into consideration in addition to the general baneful effect of liquor that this particular liquor is being taken through the channels of interstate trade for the purpose of violating the law of a State?

The court says, further:

If a State, when considering legislation for the suppression of lotteries within its own limits, may properly take into view the evils that inhere in the raising of money in that mode, why may not Congress, invested with the power to regulate commerce among the several States, provide that such commerce shall not be polluted by the carrying of lottery tickets from one State to another? In this connection it must not be forgotten that the power of Congress to regulate commerce among the States is plenary, is complete in itself, and is subject to no limitations except such as may be found in the Constitution. What provision in that instrument can be regarded as limiting the exercise of the power granted? What clause can be cited which, in any degree, countenances the suggestion that one may, of right, carry or cause to be carried from one State to another that which will harm the public morals?

What provision of the Constitution has been pointed out to us or what principle is found in that instrument which protects a man in or gives him the right to ship liquor into a State in violation of the laws of that State? What inherent right belongs to an individual to take an article of commerce and to send it in violation of law among a certain community or among a certain people? Is it unconstitutional for Congress to say that we believe it tends to good morals and the public welfare that the laws of the States be obeyed and we will not furnish aid in their violation?

We can not think of any clause of that instrument that could possibly be invoked by those who assert their right to send lottery tickets from State to State except the one providing that no person shall be deprived of his liberty without due process of law. We have said that

the liberty protected by the Constitution embraces the right to be free in the enjoyment of one's faculties, "to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts that may be proper." But surely it will not be said to be a part of anyone's liberty, as recognized by the supreme law of the land, that he shall be allowed to introduce into commerce among the States an element that will be confessedly injurious to the public morals.

It was said by the Senator from New York, in distinguishing this proposition, that we could absolutely prohibit the shipment of liquor of all kinds; but it was his opinion, as I understood his argument, that we could not take a part of that commodity which was being shipped under certain conditions and for certain purposes and single it out.

Mr. President, we fix the rule in this act of Congress. Congress does not leave it to the Sates to fix the rule. Congress fixes the rule, and says that whenever liquor is being shipped in violation of the law of a State, it itself declares that it shall be prohibited. In other words, it establishes the rule, although the operation of the rule depends upon certain conditions. When those conditions exist, the rule operates and applies to all shipments coming within that rule. Congress itself, however, selects the condition which must exist, and Congress classifies the commodity and Congress itself establishes the rule.

As a State may, for the purpose of guarding the morals of its own people, forbid all sales of lottery tickets within its limits, so Congress, for the purpose of guarding the people of the United States against the "widespread pestilence of lotteries," and to protect the commerce which concerns all the States, may prohibit the carrying of lottery tickets from one State to another. In legislating upon the subject of the traffic in lottery tickets, as carried on through interstate commerce, Congress only supplemented the action of those States—perhaps all of them—which, for the protection of the public morals, prohibit the drawing of lotteries, as well as the sale or circulation of lottery tickets within their respective limits.

Congress was confessedly here, as stated by the learned justice, simply supplementing and making effective that which the States in their respective capacities had undertaken to do, but which they were unable to do. They could prohibit the shipping of lottery tickets within their own boundaries; they could drive them from commerce within the State; but they were unable to take them out of commerce as between the States. Therefore Congress proceeded to do that which the States could not do—supplement their action and make them contraband of commerce in the territory of the United States as an entirety.

May not we, therefore, in view of the way in which liquor is regarded, the evil consequences which flow from its use, the misery and crime which follow its consumption, take that article and prohibit it from interstate commerce, not only in its entirety, but to such an extent as in our judgment we think will promote the public morals?

In regulating commerce, are we limited to the exercise of this power in its fullest extent or not at all? If we may prohibit entirely, may we not prohibit partly? May we not exercise our judgment as to what will interfere with the morals of the people and what will not? It seems to me that having the power in its completeness, we may exercise it in its fullness, or we may limit our exercise.

It said, in effect, that it would not permit the declared policy of the States, which sought to protect their people against the mischiefs of the lottery business, to be overthrown or disregarded by the agency of interstate commerce. We should hesitate long before adjudging that an evil of such appalling character, carried on through interstate commerce, can not be met and crushed by the only power competent to that end.

And finally:

It is a kind of traffic which no one can be entitled to pursue as of right.

I undertake to say that it has been established too long in this country to be contradicted that the traffic in liquor is not one that a man can have as a matter of absolute right. From the time the article "issues from the coiled copper-colored worm in the distillery until it empties into the hell of death, dishonor, and crime" it is regulated and controlled. No man can deal in it as a matter of absolute right. He can do so only as either we, the Congress of the United States, when it is interstate commerce, or as the States, when it is intrastate commerce, say he may deal with it. He can not deal with it with unrestraint, he can not begin to deal with it other than as the public may by law decide is safe. It is looked upon as a baneful, injurious, exceptional commodity, and any man who sells must do so by permission. We may say that he may not send it through interstate commerce at all, or we may say he may send it upon certain terms or conditions, and it is not for the citizens to question the limitation which we put upon that act, which he has no right, except by our consent, to do at all.

Mr. KENYON. Mr. President, a bill was passed in the House known as the Webb bill. An attempt has been made to substitute that bill to-day for what is commonly known as the Kenyon-Sheppard bill. That has not been successful, but a motion will be made by the Senator from New Hampshire [Mr. GALLINGER] to strike out all after the enacting clause and insert in lieu thereof the words of the Webb bill. I very much hope that that motion may prevail.

The PRESIDENT pro tempore. The hour of 6 o'clock having arrived, under the unanimous-consent agreement the time has arrived for voting upon the bill and amendments which may be offered thereto.

Mr. GALLINGER. Mr. President, I move to strike out all after the enacting clause and to substitute House bill 17593.

Mr. PAYNTER. Mr. President——

The PRESIDENT pro tempore. The Senator from New Hampshire moves to strike out all after the enacting clause and insert what will be read.

Mr. PAYNTER. May I rise to a point of order?

The PRESIDENT pro tempore. The Senator may, of course.

Mr. PAYNTER. I would like very much to have the Chair direct that the order under which we are proceeding shall be read and determine whether or not we have any right to take any action at all at this time.

The PRESIDENT pro tempore. The motion that is made is simply to amend the bill. It is not for the purpose of substituting the House bill.

Mr. PAYNTER. I understand that, but is it proper for me to make an inquiry of the Chair with reference to the effect of the order?

The PRESIDENT pro tempore. Undoubtedly.

Mr. PAYNTER. That is what I am doing. I call the attention of the Chair to the language of the order.

The PRESIDENT pro tempore. The Chair will have the order read.

Mr. PAYNTER. I do not urge my view about it at all. I simply want the Chair to express its opinion.

The PRESIDENT pro tempore. The Secretary will read the order.

The Secretary read as follows:

It is agreed by unanimous consent that on Monday, February 10, 1913, at 3 o'clock p. m., the bill (S. 4043) to prohibit interstate commerce in intoxicating liquors in certain cases be taken up for consideration, not to interfere with appropriation bills, and that the vote be taken on all amendments pending and amendments to be offered and upon the bill itself not later than the hour of 6 o'clock on that day.

The PRESIDENT pro tempore. The bill before the Senate has an amendment which was reported by the Judiciary Committee. That is the pending amendment. The Senator from New Hampshire [Mr. GALLINGER] now offers a distinct amendment.

Mr. PAYNTER. I have not made myself understood, Mr. President. I was trying to ascertain from the Chair whether, when the rule provides that the bill and amendment shall be voted upon not later than 6 o'clock, we can proceed after that hour.

The PRESIDENT pro tempore. The Chair would undoubtedly construe the order to mean that the Senate shall begin to vote at 6 o'clock. It would be impracticable to do otherwise.

Mr. GALLINGER. Let my amendment be read.

The PRESIDENT pro tempore. The Senator from New Hampshire moves to strike out all after the enacting clause and to insert as a substitute the language which will now be read to the Senate by the Secretary.

The SECRETARY. It is proposed to strike out all after the enacting clause of the bill and to insert:

That the shipment or transportation, in any manner or by any means whatsoever, of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended, by any person interested therein, to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, is hereby prohibited.

Mr. O'GORMAN. Mr. President, I offer an amendment to the amendment offered by the Senator from New Hampshire.

Mr. CLARKE of Arkansas. Mr. President, I make the point of order that no substitute provision can be entertained until the friends of the original bill have had an opportunity to perfect it. The amendment proposed by the Committee on the Judiciary, it seems to me, would be the pending amendment. For myself, I think that is the only constitutional and effective way to deal with this question. If I had supposed that any such movement as this would take place it would have been my duty, holding the views I do, to have submitted my reasons for believing that the amendment proposed by the Judiciary

Committee is the only effective way in which this great question can be dealt with.

I make the point of order now that we are entitled to a vote upon the proposition to amend the original bill before a counter proposition that goes to the life of it can be submitted to the Senate.

Mr. GALLINGER. Under our rules it is clearly in the province of the Senate to amend either the original bill or the substitute. They are to be considered as separate questions.

The PRESIDENT pro tempore. The Chair will state that the view taken by the Senator from Arkansas is correct and does not conflict with the view expressed by the Senator from New Hampshire. The Chair was going to submit to the Senate first amendments to the original proposition. It is proper, however, that the substitute and amendments thereto should be submitted to the Senate, but not voted upon until after the friends of the original measure have had an opportunity to perfect the same. After that has been done, the friends of the substitute will have a like opportunity to perfect that measure, and when each has been perfected by its friends the Senate will be in a position to judge and choose between the two. Upon that suggestion the Chair will state that the first question will be upon the amendment now pending, reported by the Judiciary Committee, to the original bill.

Mr. O'GORMAN. Let the amendment I offered to the amendment of the Senator from New Hampshire be read.

The PRESIDENT pro tempore. The Secretary will read the amendment which has been offered by the Senator from New York to the substitute.

The SECRETARY. It is proposed to add at the end of the amendment offered by the Senator from New Hampshire the following words:

But nothing in this act shall be construed to forbid the interstate shipment of liquors herein defined into any State, Territory, or District where the same are intended for sacramental purposes, or for the personal use of the owner or consignee thereof, or for the members of his family.

The PRESIDENT pro tempore. The question now is upon the amendment reported by the Judiciary Committee.

Mr. HITCHCOCK. I should like to inquire whether it would be proper at this time for me to offer an amendment to the bill, to follow the amendment of the committee.

The PRESIDENT pro tempore. It can now be received and read for information. If it were an amendment to that amendment, it would be now in order, but if it is a substantive amendment it will be voted upon afterwards.

Mr. HITCHCOCK. It is to be added to the amendment of the committee.

The PRESIDENT pro tempore. It will be in order after that amendment has been acted upon by the Senate. The Secretary will read the amendment reported by the Judiciary Committee.

The SECRETARY. The committee report, on page 2, line 12, after the word "prohibited," to strike out the semicolon and the remainder of the bill and to insert a new section, to be known as section 2, to read as follows:

SEC. 2. That all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale, or storage therein, shall, upon arrival within the boundaries of such State or Territory and before delivery to the consignee, be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its reserved police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

The PRESIDENT pro tempore. The Chair will inquire of the Senator from Nebraska whether the amendment proposed by him proposes to change the amendment of the committee or is simply to add to it?

Mr. HITCHCOCK. It will be an addition to that paragraph, and it would somewhat change it. I think it is an amendment properly to it.

The PRESIDENT pro tempore. That being so, the Secretary will read that first.

The SECRETARY. It is proposed to add at the end of section 2 reported by the committee the following proviso:

Provided, however, That nothing in this act shall be held or construed to render illegal or subject to State control the interstate shipment of liquors or liquids above described into any State or Territory to an individual for his personal or family use.

Mr. McCUMBER. I do not know that I heard that distinctly and correctly. I ask that it be read again, so that I may understand whether it allows shipments into another State for the personal use of a drunkard or a minor.

The PRESIDENT pro tempore. The Secretary will again read the amendment to the amendment.

The Secretary again read Mr. HITCHCOCK's amendment to the amendment.

The PRESIDENT pro tempore. The question is upon the adoption of the amendment offered by the Senator from Nebraska [Mr. HITCHCOCK] to the amendment reported by the Judiciary Committee.

The amendment to the amendment was rejected.

The PRESIDENT pro tempore. The question recurs upon the adoption of the amendment reported by the Judiciary Committee.

Mr. McCUMBER. I offer the following amendment, to be inserted after the enacting clause, without taking anything from the bill.

The PRESIDENT pro tempore. That would not now be in order. It will be subsequently in order, but unless it is an amendment to the pending amendment it would not now be in order.

Mr. McCUMBER. It is an amendment to the pending amendment.

The PRESIDENT pro tempore. The Senator stated that it was to come in after the enacting clause. The Chair does not know what it is. The Secretary will read the amendment to the amendment.

Mr. McCUMBER. Let it came in prior, then, to section 2 of the bill.

The PRESIDENT pro tempore. That will be in order later, but it is not an amendment to the pending amendment. The Chair is of the opinion that it is an independent amendment and not an amendment to the pending amendment. It will be in order after the pending amendment has been acted upon.

Mr. CULBERSON. I ask that the amendment may be read.

The PRESIDENT pro tempore. The Secretary will read the amendment submitted by the Senator from North Dakota.

The Secretary read as follows:

That all fermented, distilled, or other intoxicating liquors or liquids, being commodities in their nature dangerous to public health and good morals, their shipment from one State, Territory, or the District of Columbia into another State, Territory, or the District of Columbia is hereby authorized and allowed only on condition that their interstate-commerce character shall cease immediately upon their arrival within the boundaries of the State, Territory, or the District of Columbia to which they are consigned; and they shall thereupon be divested of their interstate-commerce character.

The PRESIDENT pro tempore. The Chair will state that if the Senator moves that as a substitute for the pending amendment it will now be in order.

Mr. McCUMBER. I do not intend it as a substitute, but I want to have it inserted in connection with the amendment of the committee.

The PRESIDENT pro tempore. It will be in order after the amendment of the committee has been acted upon. The question is on agreeing to the amendment reported by the Judiciary Committee which has been read to the Senate.

Mr. CLARKE of Arkansas. On that I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. GALLINGER. I will ask that the amendment be again stated. I think there is a misapprehension about it.

The PRESIDENT pro tempore. The amendment will be again read.

The SECRETARY. On page 2, beginning in line 12, after the word "prohibited," the Committee on the Judiciary report to strike out the semicolon and the remainder of the bill and to insert:

SEC. 2. That all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale, or storage therein, shall, upon arrival within the boundaries of such State or Territory and before delivery to the consignee, be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its reserved police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

The PRESIDENT pro tempore. The question is upon the adoption of this amendment and the yeas and nays were ordered thereon.

Mr. STONE. That is the committee amendment.

The PRESIDENT pro tempore. It is the amendment reported by the Judiciary Committee. The Secretary will proceed to call the roll.

The Secretary proceeded to call the roll.

Mr. BRADLEY (when his name was called). I transfer my pair with the Senator from Indiana [Mr. KERN] to the senior Senator from Pennsylvania [Mr. PENROSE] and vote "nay."

Mr. CHILTON (when his name was called). I have a general pair with the Senator from Illinois [Mr. CULLOM]. I understand from him, however, that he is for this bill and he has given me permission to vote. I vote "yea."

Mr. SMITH of Michigan (when his name was called). I have a pair with the junior Senator from Missouri [Mr. REED]. In his absence I transfer that pair to the junior Senator from New Mexico [Mr. FALL] and vote. I vote "yea."

Mr. CHILTON (when Mr. WATSON'S name was called). My colleague [Mr. WATSON] has a general pair with the senior Senator from New Jersey [Mr. BRIGGS]. If my colleague were present, he would vote "yea."

Mr. WILLIAMS (when his name was called). I vote "yea." To explain my vote I will state that I have a pair with the Senator from Pennsylvania [Mr. PENROSE], but I transfer that pair to the Senator from Indiana [Mr. KERN]. Therefore I voted "yea."

The roll call was concluded.

Mr. FOSTER (after having voted in the negative). I wish to inquire if the junior Senator from Wyoming [Mr. WARREN] has voted.

The PRESIDENT pro tempore. The Chair is informed that he has not voted.

Mr. FOSTER. Not knowing how that Senator would vote on this question and having a general pair with him, I withdraw my vote.

Mr. HITCHCOCK. I will state that the junior Senator from Indiana [Mr. KERN] is absent on public business.

Mr. STONE. I desire to state that my colleague [Mr. REED] is absent, and detained by reason of serious illness in his family.

The result was announced—yeas 61, nays 23, as follows:

YEAS—61.

Ashurst	Dixon	Lodge	Smith, Md.
Bacon	Fletcher	McCumber	Smith, Mich.
Bourne	Gardner	McLean	Smith, S. C.
Brady	Gore	Martin, Va.	Stone
Bristow	Gronna	Myers	Swanson
Brown	Guggenheim	Nelson	Thomas
Bryan	Hitchcock	Newlands	Thornton
Chamberlain	Jackson	Oliver	Tillman
Chilton	Johnson, Me.	Overman	Townsend
Clapp	Johnston, Ala.	Perkins	Webb
Clark, Wyo.	Jones	Poindexter	Wetmore
Clarke, Ark.	Kavanaugh	Richardson	Williams
Crawford	Kenyon	Sheppard	Works
Culberson	La Follette	Simmons	
Cummins	Lea	Smith, Ariz.	
Curtis	Lippitt	Smith, Ga.	

NAYS—23.

Bankhead	Catron	Martine, N. J.	Pomerene
Borah	Crane	O'Gorman	Root
Bradley	Dillingham	Owen	Smoot
Brandegee	du Pont	Page	Stephenson
Burnham	Gallinger	Paynter	Sutherland
Burton	Gamble	Percy	

NOT VOTING—11.

Briggs	Foster	Penrose	Warren
Cullom	Kern	Reed	Watson
Fall	Massey	Shively	

So the amendment of the committee was agreed to.

Mr. KENYON. Mr. President, I desire to offer an amendment to section 1 of the bill. Is that now in order?

The PRESIDENT pro tempore. It is.

Mr. McCUMBER. I should like to ask if my amendment is not now in order?

The PRESIDENT pro tempore. The Chair was about to call attention to the fact that the amendment offered by the Senator from North Dakota is first in order, unless the amendment offered by the Senator from Iowa is an amendment to that.

Mr. KENYON. It is not.

The PRESIDENT pro tempore. The Chair understands it is not. Then, the amendment now pending is the one offered by the Senator from North Dakota [Mr. McCUMBER], which will be read.

Mr. CRAWFORD. I ask that it be read.

Mr. WILLIAMS. I should like to have the amendment again read.

The PRESIDENT pro tempore. The amendment will be again read. The Chair has just directed that it be read.

Mr. McCUMBER. I should like to ask the Chair to state that the amendment is intended to be inserted after the enacting clause and before the remainder of the amendment.

The PRESIDENT pro tempore. As a distinct section. The proposition is to insert as a distinct section the amendment now to be read, without interfering with the other parts of the bill.

Mr. STONE. Mr. President, if it is a proper parliamentary inquiry—and I doubt it—I should like the Chair to state whether the amendment now proposed would not, in substance, displace the amendment of the committee just agreed to?

The PRESIDENT pro tempore. It is perfectly competent for the Senate to adopt an independent amendment, and the question of its consistency or inconsistency is not a parliamentary question.

Mr. STONE. But it is well enough to call the attention of the Senate to it.

Mr. McCUMBER. I should like to have the amendment again read.

The PRESIDENT pro tempore. The Secretary will again read the amendment.

The SECRETARY. After the enacting clause it is proposed to insert:

That all fermented, distilled, or other intoxicating liquors or liquids being commodities in their nature dangerous to public health and good morals, their shipment from one State, Territory, or the District of Columbia into another State, Territory, or the District of Columbia is hereby authorized and allowed only on condition that their interstate-commerce character shall cease immediately upon their arrival within the boundaries of the State, Territory, or the District of Columbia to which they are consigned, and they shall thereupon be divested of their interstate-commerce character.

The PRESIDENT pro tempore. The question is upon the adoption of the amendment.

Mr. WILLIAMS. I wish to ask the Senator a question. I think the Senator has forgotten or pretermitted something. This would not prevent any liquor being sold to Porto Rico?

The PRESIDENT pro tempore. The Chair is unable to hear the Senator from Mississippi or to decide whether he is in order.

Mr. WILLIAMS. I was merely suggesting the propriety of an amendment to the amendment of the Senator from North Dakota.

The PRESIDENT pro tempore. The question is upon the adoption of the amendment just read, to be inserted as an independent section.

The amendment was rejected.

Mr. O'GORMAN. I offer at this time the amendment which I send to the desk.

The PRESIDENT pro tempore. Is the amendment offered to the original bill?

Mr. O'GORMAN. Yes.

The PRESIDENT pro tempore. The amendment will be stated.

The SECRETARY. It is proposed to amend by adding at the end of the bill the following:

But nothing in this act shall be construed to forbid the interstate shipment of liquors herein defined into any State, Territory, or District where the same are intended for sacramental purposes or for the personal use of the owner or consignee thereof or for the members of his family.

The PRESIDENT pro tempore. The question is on the adoption of the amendment just offered by the Senator from New York as an independent section to the original bill.

Mr. O'GORMAN. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. OWEN. Let the amendment be again stated.

The PRESIDENT pro tempore. The amendment will be again read.

The Secretary again read the amendment proposed by Mr. O'GORMAN.

Mr. McCUMBER. A parliamentary inquiry, Mr. President.

The PRESIDENT pro tempore. The Senator will state it.

Mr. McCUMBER. Is not that exactly the same amendment which was offered by the Senator from Nebraska [Mr. HITCHCOCK] and voted down?

The PRESIDENT pro tempore. It is not.

Mr. LODGE. This is offered to the House bill, as I understand.

The PRESIDENT pro tempore. It is not the same amendment in words.

Mr. CLARKE of Arkansas. Mr. President, I want to submit another point after the Chair has disposed of that one. I did not intend to interrupt the Chair.

The PRESIDENT pro tempore. The Chair has disposed of it.

Mr. CLARKE of Arkansas. I make the point of order that the amendment is not germane to any provision of the bill, since neither the bill nor the amendment proposed by the Judiciary Committee deals with the question of transmitting liquor in interstate commerce, but simply to divest a certain commodity of that character at the pleasure of the several States of the Union. It does not undertake to exclude by the exercise of national power liquor intended for any use, but leaves that matter exclusively to be determined by the States after the liquor shall have reached the State boundaries. I therefore make the point of order that the amendment is not germane to the provisions to which it is sought to be added as an amendment.

Mr. O'GORMAN. Mr. President, if everyone were to construe the amendment offered by the Senate committee as the Senator from Arkansas [Mr. CLARKE] construes it, there would be no need for this amendment, but others will not construe it

as the Senator from Arkansas construes it. Therefore I urge the necessity of the amendment.

Mr. GALLINGER. Regular order, Mr. President.

Mr. O'GORMAN. Those who violate this law——

Mr. GALLINGER. Regular order!

Mr. O'GORMAN. Those who advocate this enactment profess to throw no restriction upon the personal use of intoxicants. I want that to be declared by the statute.

The PRESIDENT pro tempore. Under the rule, the point of order made that a certain amendment is not germane must be submitted to the Senate; it is not a question for the decision of the Chair. The Chair will, therefore, submit to the Senate the question of whether or not the amendment is germane. Is the amendment submitted by the Senator from New York germane to the bill? [Putting the question.] The Chair is in doubt.

Mr. O'GORMAN. I ask for the yeas and nays, Mr. President.

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

Mr. CHILTON (when his name was called). I again announce my pair with the senior Senator from Illinois [Mr. CULLOM] and withhold my vote.

Mr. FOSTER (when his name was called). I again announce my pair with the Senator from Wyoming [Mr. WARREN]. I will state that, if I were permitted to vote, I should vote "yea."

Mr. CHILTON (when Mr. WATSON's name was called). My colleague [Mr. WATSON] is paired with the senior Senator from New Jersey [Mr. BRIGGS]. I do not know how my colleague would vote on this question if he were present.

Mr. WILLIAMS (when his name was called). Upon this particular matter, not knowing how either the Senator from Pennsylvania [Mr. PENROSE] or the Senator from Indiana [Mr. KERN] would vote if they were present, I shall observe my pair with the Senator from Pennsylvania [Mr. PENROSE]. If he were present and I were privileged to vote, I should vote "no."

The roll call was concluded.

The result was announced—yeas 41 nays 41, as follows:

YEAS—41.

Bacon	Fletcher	O'Gorman	Smoot
Bankhead	Gamble	Oliver	Stephenson
Bradley	Guggenheim	Owen	Stone
Brandegee	Hitchcock	Page	Sutherland
Burton	Johnson, Me.	Paynter	Thomas
Catron	Kavanaugh	Percy	Thornton
Clark, Wyo.	La Follette	Perkins	Tillman
Crane	Lippitt	Pomerene	Wetmore
Culberson	Lodge	Richardson	
Dillingham	McLean	Root	
du Pont	Martine, N. J.	Smith, Ga.	

NAYS—41.

Ashurst	Crawford	Kenyon	Smith, Ariz.
Borah	Cummins	Lea	Smith, Md.
Bourne	Curtis	McCumber	Smith, Mich.
Brady	Dixon	Martin, Va.	Smith, S. C.
Bristow	Gallinger	Myers	Swanson
Brown	Gardner	Nelson	Townsend
Bryan	Gore	Newlands	Webb
Burnham	Gronna	Overman	Works
Chamberlain	Jackson	Poindexter	
Clapp	Johnston, Ala.	Sheppard	
Clarke, Ark.	Jones	Simmons	

NOT VOTING—13.

Briggs	Foster	Reed	Williams
Chilton	Kern	Shively	
Cullom	Massey	Warren	
Fall	Penrose	Watson	

The PRESIDENT pro tempore. On the question of the adoption of the amendment the yeas are 41 and the nays are 41, so the amendment is not adopted.

Mr. SMITH of Georgia. Mr. President, the vote was not upon the adoption of the amendment, but upon the question of its being germane.

The PRESIDENT pro tempore. The Chair in stating the result was in error.

Mr. GALLINGER. Regular order!

Mr. CULBERSON. Mr. President, I presume the Senator from New York desires now to present the amendment.

The PRESIDENT pro tempore. The Chair is of the opinion that the question was really upon the point of order, and the point of order is not sustained upon a tie vote.

Mr. CLARKE of Arkansas. Mr. President, in my humble opinion that is not the question. The rule provides that upon the question of germaneness being raised the proposition shall be submitted to the Senate.

The PRESIDENT pro tempore. Yes.

Mr. CLARKE of Arkansas. It would require affirmative action of the Chair to decide that an amendment is in order, and it would therefore require the affirmative action of the Senate to decide that it is germane.

Mr. STONE. The Chair can not decide the question of germaneness, and, therefore, the Chair submitted the question to the Senate to decide, as a point of order, whether or not it was germane.

The PRESIDENT pro tempore. If the point of order had been submitted without any provision in the rules which required its submission to the Senate, it would have been a question of sustaining the point of order. The rule of the Senate simply goes to the extent that instead of the Chair deciding it as a point of order it shall be decided by the Senate. The question really is whether the point of order is well taken.

Mr. CLARKE of Arkansas. That is not what the rule says. I should be glad if the Chair would have the rule read to the Senate.

The PRESIDENT pro tempore. The Chair will have it read.

Mr. McCUMBER. Mr. President, I rise to a point of order.

The PRESIDENT pro tempore. The Senator will state it.

Mr. McCUMBER. Did not the Chair put to the Senate the question, "Is this amendment germane?"

The PRESIDENT pro tempore. Yes; but the Chair considers that——

Mr. McCUMBER. And the vote did not sustain the fact that it was germane?

Mr. GALLINGER. That is right.

Mr. O'GORMAN. Mr. President, I asked for the yeas and nays on the original amendment which I proposed, and that seems to be the regular order.

The PRESIDENT pro tempore. The Chair desires to make the final ruling, and then it will be competent to appeal from the decision of the Chair if it is thought to be wrong. In the opinion of the Chair it was really a submission of the question of the point of order, and in the absence of an affirmative vote it is the opinion of the Chair that the point of order fails.

Mr. CLARKE of Arkansas. Mr. President, I shall not prosecute an appeal at this late hour; but I do not want the occasion to pass without saying that, if the hour were not so late and we were not so anxious to dispose of this matter, I should ask the judgment of the Senate on that question.

The PRESIDENT pro tempore. The Chair may be in error, but that is the opinion of the Chair.

Mr. WORKS. Mr. President, the trouble about it, I think, is not in the present ruling of the Chair, but the fact that the question was erroneously put in the beginning.

The PRESIDENT pro tempore. Possibly that is the case. The Chair recognizes that to be so.

Mr. WORKS. The Chair very clearly stated that the question was whether or not the amendment was germane, and I voted upon that understanding. Now, upon the ruling of the Chair, my vote is simply reversed.

The PRESIDENT pro tempore. In the opinion of the Chair, it is simply a point of order.

Mr. CRAWFORD. Mr. President——

Mr. STONE, Mr. LODGE, and others. Regular order!

The PRESIDENT pro tempore. The regular order is demanded.

Mr. CRAWFORD. Has this matter been disposed of?

The PRESIDENT pro tempore. The question is on the amendment offered by the Senator from New York [Mr. O'GORMAN].

Mr. O'GORMAN. Upon that I ask for the yeas and nays.

Mr. HITCHCOCK. Mr. President, the yeas and nays have already been ordered on the amendment of the Senator from New York.

The PRESIDENT pro tempore. The Senator from Nebraska is correct.

Mr. O'GORMAN. Mr. President, I ask that the Secretary again read the amendment for the information of the Senate.

The PRESIDENT pro tempore. The Secretary will again read the amendment.

The SECRETARY. It is proposed to add at the end of the bill the following:

But nothing in this act shall be construed to forbid the interstate shipment of liquors herein defined into any State, Territory, or District where the same are intended for sacramental purposes or for the personal use of the owner or consignee thereof or for the members of his family.

Mr. McCUMBER. Mr. President, is not that subject to amendment?

The PRESIDENT pro tempore. It certainly is.

Mr. McCUMBER. I move to strike out all of the amendment after the words "sacramental purposes."

The PRESIDENT pro tempore. The question is on the amendment of the Senator from North Dakota to the amendment proposed by the Senator from New York to strike out all of the proposed amendment following the words "sacramental purposes." [Putting the question.] By the sound the "noes" appear to have it.

Mr. McCUMBER. I ask for the yeas and nays.

The PRESIDENT pro tempore. The yeas and nays are called for.

Mr. McCUMBER. I withdraw the request.

The PRESIDENT pro tempore. The Senator from North Dakota withdraws his request for the yeas and nays. The amendment to the amendment is rejected.

The question now is upon the amendment proposed by the Senator from New York upon which the yeas and nays have been ordered. The Secretary will call the roll.

The Secretary proceeded to call the roll.

Mr. CHILTON (when his name was called). I again announce my pair with the senior Senator from Illinois [Mr. CULLOM]. Not knowing how he would vote if present, I withhold my vote.

Mr. FOSTER (when his name was called). I again announce the absence of my pair, the senior Senator from Wyoming [Mr. WARREN] and state that if I were at liberty to vote I should vote "yea."

Mr. WILLIAMS (when his name was called). I have a general pair with the senior Senator from Pennsylvania [Mr. PENROSE], but I am reliably informed that if he were present he would vote "yea." I therefore desire to vote. I vote "yea."

The roll call was concluded.

Mr. CHAMBERLAIN. I am requested to announce the pair of the senior Senator from West Virginia [Mr. WATSON] with the senior Senator from New Jersey [Mr. BRIGGS].

The result was announced—yeas 31, nays 50, as follows:

YEAS—31.

Bacon	Guggenheim	Martine, N. J.	Stephenson
Bankhead	Hitchcock	O'Gorman	Stone
Bradley	Johnson, Me.	Oliver	Sutherland
Brandegee	Johnston, Ala.	Paynter	Thomas
Burton	Kavanaugh	Perkins	Tillman
Catron	La Follette	Pomerene	Wetmore
du Pont	Lodge	Richardson	Williams
Crane	McLean	Root	

NAYS—50.

Ashurst	Culberson	Kenyon	Simmons
Borah	Cummins	Lea	Smith, Ariz.
Bourne	Curtis	Lippitt	Smith, Ga.
Brady	Dillingham	McCumber	Smith, Md.
Bristow	Dixon	Martin, Va.	Smith, Mich.
Brown	Fletcher	Myers	Smith, S. C.
Bryan	Gallinger	Nelson	Swanson
Burnham	Gamble	Newlands	Thornton
Chamberlain	Gardner	Overman	Townsend
Clapp	Gore	Owen	Webb
Clark, Wyo.	Gronna	Page	Works
Clarke, Ark.	Jackson	Poindexter	
Crawford	Jones	Sheppard	

NOT VOTING—14.

Briggs	Foster	Percy	Warren
Chilton	Kern	Reed	Watson.
Cullom	Massey	Shively	
Fall	Penrose	Smoot	

So Mr. O'GORMAN's amendment was rejected.

Mr. KENYON. Mr. President, I offered an amendment prior to the amendment of the Senator from New York [Mr. O'GORMAN], which I ask to have stated.

The PRESIDENT pro tempore. The amendment will now be read.

The SECRETARY. On page 2, lines 3, 4, and 5, it is proposed to strike out the words "by any person interested therein, directly or indirectly, or in any manner connected with the transaction," and to insert in lieu thereof the following: "Either by the consignor or consignee, or the agent of either thereof."

The PRESIDENT pro tempore. The question is upon the adoption of the amendment of the Senator from Iowa.

Mr. STONE. I should like to have the section read as it is proposed to be amended.

The PRESIDENT pro tempore. The section as proposed to be amended will be read.

The Secretary read as follows:

Be it enacted, etc., That the shipment or transportation in any manner or by any means whatsoever of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, including beer, ale, or wine, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended, either by the consignor or consignee, or the agent of either thereof, to be received, possessed, or kept, or in any manner used, either in the original package or otherwise, in violation of any law of such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, enacted in the exercise of the police powers of such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, is hereby prohibited.

The PRESIDENT pro tempore. The question is upon the adoption of the amendment offered by the Senator from Iowa to strike out and insert as read by the Secretary.

The amendment was agreed to.

Mr. KENYON. Mr. President, I offer the amendment which I send to the desk, to be known as section 3.

The PRESIDENT pro tempore. The proposed amendment will be stated.

The SECRETARY. It is proposed to add a new section at the end of the bill, as follows:

SEC. 3. This act shall be in full force and effect on and after the 1st day of July, 1913.

The PRESIDENT pro tempore. The question is upon the adoption of the amendment just read.

The amendment was agreed to.

The PRESIDENT pro tempore. If there be no further amendments to the original bill, the substitute is now before the Senate, with the amendment which has been offered to it. The Chair understands that the amendment voted upon the original bill is identical with this, and therefore it will not be submitted to the Senate. The question is upon the adoption of the substitute offered by the Senator from New Hampshire [Mr. GALLINGER] to strike out all after the enacting clause and insert in lieu thereof the language of the amendment which has been already read. It will be read again if desired. The question is upon the adoption of the amendment to strike out and insert.

The amendment was agreed to.

The PRESIDENT pro tempore. If there are no further amendments to be offered as in Committee of the Whole, the bill will be reported to the Senate.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

On motion of Mr. GALLINGER, the title was amended so as to read: "A bill divesting intoxicating liquors of their interstate character in certain cases."

The bill as passed by the Senate is as follows:

A bill (S. 4043) divesting intoxicating liquors of their interstate character in certain cases.

Be it enacted, etc., That the shipment or transportation in any manner or by any means whatsoever of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended by any person interested therein to be received, possessed, sold, or in any manner used either in the original package or otherwise in violation of any law of such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, is hereby prohibited.

Mr. GALLINGER. I move that the Senate adjourn.

The motion was agreed to; and (at 6 o'clock and 58 minutes p. m.) the Senate adjourned until to-morrow, Tuesday, February 11, 1913, at 12 o'clock meridian.

HOUSE OF REPRESENTATIVES.

MONDAY, *February 10, 1913.*

The House met at 10.30 o'clock a. m.

The Chaplain, Rev. Henry N. Couden, D. D., offered the following prayer:

Almightly Father, author and finisher of our faith, renew our confidence in Thee that we may go forward with unfaltering footsteps to the work of the hour, with an increasing consciousness of Thy presence to uphold, sustain, and guide us in right thinking and in right living, that we may walk worthy of the vocation whereunto we are called. In the spirit of the Christ. Amen.

The Journal of the proceedings of yesterday was read and approved.

AMERICAN IMPORTERS OF MANILA HEMP.

Mr. HARDWICK. Mr. Speaker, I desire to present a privileged resolution.

Mr. BOOHER. Mr. Speaker——

The SPEAKER. For what purpose does the gentleman from Missouri [Mr. BOOHER] rise?

Mr. BOOHER. To call the attention of the Speaker to the fact that there are 20 Members of Congress in this Hall, and therefore I make a point of no quorum.

The SPEAKER. Will the gentleman withhold it until we get through with these routine matters?

Mr. HARDWICK. Mr. Speaker, I move to discharge the Committee on Ways and Means from the further consideration of House resolution 779, which I send to the Clerk's desk, and ask that the House do pass the same.

The SPEAKER. The gentleman from Georgia [Mr. HARDWICK] moves to discharge the Committee on Ways and Means